Dayatattwa of Raghunandana

Raghunandana Bhaṭṭācārya

Raghunandana Bhattacarya

DAYATATTWA

OF

RAGHUNANDANA.

TRANSLATED

BY

GOLÁPCHANDRA SARKÁR, SÁSTRÍ, M. A., B. L.

VAKIL, HIGH COURT, CALCUTTA.

Author of English versions of the Víramitrodaya and the Vivádaratnákara Sanskrit Commentaries on Hindu Law; Professor of Law, Metropolitan Institution; Fellow, Calcutta University; sometime Tagore Professor of Law, and author of the Tagore Lectures on Adoption; Professor of Law, Bangabasi College; Author of Hindu Law, &c., &c. &c.

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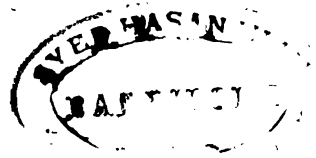
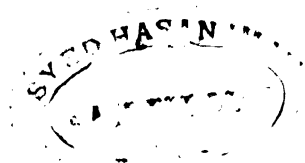

TO

THE HONOURABLE LOUIS STUART JACKSON,

ONE OF THE JUDGES OF HER MAJESTY'S HIGH COURT
OF JUDICATURE AT FORT WILLIAM IN BENGAL.

THIS TRANSLATION OF THE DAYATATTWA OF RAGHUNANDANA,

IS DEDICATED

AS A SMALL TRIBUTE OF RESPECT FOR HIS
PROFOUND KNOWLEDGE OF THE
LAWS, MANNERS AND CUSTOMS
OF THE HINDUS.

PREFACE TO THE FIRST EDITION.

Most of the principal treatises on Hindu Law, have been rendered into English, and the usefulness of these translations has been universally felt and acknowledged. The Dáyatattwa has always been regarded as an authority of considerable importance. It is a compendium of the Dáyabhága; but there are places in which the author of the Dáyatattwa differs from the doctrines of Jímútaváhana. It is one of the twenty-eight Chapters of the Smrititattwa, the work of Raghunandana Bhattácхárya. The Dáyatattwa forms the Chapter on the Law of Inheritance as prevalent in Bengal, and is the most important portion of the work. The reputation of Raghunandana as an authority is very great in Bengal. He is emphatically called the "Smárta Bhattácхárya" or the Learned Professor of Law. In speaking of him Colebrooke says:—"The Bengal school alone having taken for its guide Jimutavahana's treatise which is, on almost every disputed point, opposite in doctrine to the Mitakshara has no deference for its authority. On this account independently of any other considerations, it would have been necessary to admit into the present volume either his treatise or some one of the abridgements of his doctrine which are in use and of which the best known and the most approved is Raghunandana's Dayatattwa.

"The Dayatattwa or so much of the Smrititattwa as relates to inheritance, is the undoubted composition of Raghunandana; and, in deference to the greatness

of the author's name and the estimation in which his works are held among the learned Hindus of Bengal has been throughout diligently consulted and carefully compared with Jimutavahana's treatise on which it is almost exclusively founded. It is indeed an excellent compendium of the Law, in which not only Jimutavahana's doctrines are in general strictly followed but are commonly delivered in his own words in brief extracts from his text. On a few points, however, Raghunandana has differred from his master; and in some instances he has supplied deficiencies.

"Now Raghunandana's date is ascertained at about three hundred years from this time; for he was, pupil of Vasudeva Sarvabhauma, and studied at the same time with three other disciples of the same preceptor who likewise have acquired great celebrity; viz. Siromani, Krishnanda and Chaitanya; the latter is the well known founder of the religious order and sect of Vaishnavas so numerous in the vicinity of Calcutta and so notorious for the scandalous dissoluteness of their morals; and the date of his birth being held memorable by his followers, it is ascertained by his horoscope said to be still preserved, as well as by the express mention of the date in his works, to have been 1411 of the Saka era, answering to Y. C. 1489: consequently Raghunandana, being his contemporary, must have flourished at the beginning of the Sixteenth Century." (Colebrooke's preface to the Dáyabhága.)

In some cases, the want of a translation of the Dáyatattwa has necessitated the filing of authenticated translations of excerpts in the records of suits.

These considerations have led to this attempt to present a translation of the complete work. In preparing this translation the language of Colebrooke, in his translation of such texts as are common to both the Dáyabhága and the Dáyatattwa, and in the quotations from the Dáyatattwa incorporated with his annotations on the Dáyabhága, has generelly been, with slight variations adopted. For such defects as may have crept into the translation, the indulgence of the generous reader is solicited.

G. C. S.

High Court, *September*, 1874.

PREFACE TO THE SECOND EDITION.

This is the second edition of the English translation of a work on the Hindu Law of Inheritance, which, next to the Dáyabhága, is most respected by the people of Bengal, but which for want of an English version of it, had been inaccessible and unknown to the Judges and lawyers without Sanskrit; and so the light it throws on the Bengal law of Inheritance and Succession had been beyond their reach. There was in consequence considerable speculation about the heritable right, and their position in the order of succession, of cognates other than those whose inheritance and succession are set forth by the founder of the Bengal school, either expressly or by necessary implication, in his Dáyabhága respected as the work of paramount authority in Bengal. Jímútaváhana the author of that treatise, however, left the law in the same state in which it was under the Mitákshará, subject to the innovations and modifications introduced by him. This view is corroborated by the exposition of this branch of the law in the Dáyatattwa by Raghunandana who was a respectful follower of Jímútaváhana, and supplied the deficiencies of the latter's work. The object of the founder of the Bengal school was not to repeat in its entirety the order of succession which had been previously explained in the Mitákshará and other commentaries, and was well-understood by the learned at the time he flourished, but to introduce certain modifications of the same, specially by recognising some dear and near cognates as heirs in preference to remoter

agnates, and to set forth the order of succession, so far only, as was necessary for showing the position of these cognates in the same, and to establish this altered order of succession to be what was really intended by the sages or compilers or propounders of the Smritis or Hindu Codes, by elaborate arguments founded on different principles, of which the capacity to confer spiritual benefit by the performance of the Párvana Sráddha is most prominent and conspicuous.

For a proper and correct understanding of a commentary like the Dáyaghága it is absolutely necessary to take into consideration the law as it was understood by the previous as well as by the subsequent commentators of both the schools.

Theoretically, Hindu law is contained in the Smritis or the Codes of Manu and other sages; the commentators profess merely to explain the same. The earlier commentators composed systematic treatises on all branches of law, compiling and reconciling the texts of the various Codes which do not appear to lay down the same law in all matters. But it must not be supposed that all the commentators endeavoured to set forth the rules of law that may fairly and reasonably be deduced from a comparison of the texts of the different Smritis or Codes on the same subject, by the application of the authoritative rules of interpretation and construction; for, what the successive commentators who founded the different schools, really did, was, that they altered the law as laid down by their predecessors under the pretext of interpreting the Smritis; and what the followers of the founders of the schools did, was, to explain the law laid

down by their masters, more fully when left dubious or obscure by them, and also supplied their deficiencies, and sometimes refuted adverse arguments advanced by writers of other schools who were opponents of their doctrines, and they did also, though rarely, express with respect their dissent from the view of their masters, where the same appeared to them to be open to just and legitimate criticism.

Hence one must know what had been the law before, and how has the law been understood after, a particular commentary was written, in order to understand fully, properly and correctly the law intended to be enunciated by its author. Every commentator appears to address his work to those that were familiar with the law explained in the then existing commentaries ; and with regard to the innovations and alterations introduced by him, the prevalent doctrines opposed to his views are noticed, controverted and refuted by him with elaborate ratiocination, while those assented to by him are accepted without discussion as forming the common basis of argument, and some again are tacitly accepted though left altogether unnoticed, as matters well-understood and so thought unnecessary to be repeated.

Accordingly, the law of the Bengal school founded by Jímútaváhana whose views are enunciated in his Dáyabhága cannot be fully, clearly and correctly appreciated and understood unless one reads that work together with the Mitákshará the universally respected anterior commentary on all the branches of law, on the one hand, and the posterior works of both the schools, on the other, namely, the glosses on the Dáyabhága,

this Dáyatattwa, and the Dáyakrama-Sangraha, works of the Bengal school, supplementing and explaining the doctrines and the law laid down in that treatise of paramount authority in Bengal, as well as the later works of the Mitákshará school, criticising the peculiar doctrines of the Bengal school, such as the Víramitrodaya of Mitra-Misra.

This historical method of study should be adopted, inasmuch as that alone can enable us to understand not only the gradual growth and development of Hindu law, but also the law of the Bengal school the distinctive features of which are laid down in the Dáyabhága a work which is admitted on all hands to be not exhaustive as regards inheritance and succession the only branch of law it deals with. It has already been remarked that all the schools profess to admit the Smritis to be the fountain-source of law, and all that the commentators profess to do, is to explain the law propounded in these Codes. The successive commentators do, as has already been said, either supplement and elucidate the law as left by their predecessors, or introduce some changes and innovations in the law, under the pretext and disguise of putting correct interpretation on the texts of the Smritis. The successive commentaries are therefore inter-dependent on each other, to a certain extent, so that for the purpose of the correct understanding of any one of them, the others should be taken into consideration. The Dáyabhága bears the distant analogy of being as it were an amending Statute of the Mitákshará so far as Bengal is concerned. This comparison expresses the relation which the two works bear to each other.

Although the Dáyabhága is the fountain-source of the peculiar doctrines constituting the Bengal school, and as such is regarded as the work of paramount authority in Bengal, still, having regard to the nature and character of the treatise, it must not be deemed and read like a modern statute intended to codify any branch of law. The Mitákshará and the Dáyabhága purport to the mere commentaries on the Smritis, and bear no resemblance to Codes of law.

The Dáyabhága is undoubtedly later than the Mitákshará as regards both time and development: and the knowledge of the previous state of the law enunciated in the Mitákshará is, as has already been remarked, absolutely necessary for understanding the peculiar doctrines of the Bengal school, which are in opposition to those of the Mitákshará, as well as for appreciating the arguments advanced in the Dáyabhága to support and maintain its positions, and to controvert and refute the opposite views inculcated in the Mitákshará. It follows therefore that as regards matters on which the Dáyabhága is silent and deficient, the law of the Mitákshará was intended by the founder of the Bengal school to be accepted and followed. And this is precisely the view which the Privy Council have taken, and if I may presume to say so, rightly taken, while giving a lucid exposition of the manner in which the different schools have come into existence. Their Lordships observe,— "Thus the Mitákshará, which is universally accepted by all the schools except that of Bengal, as of the highest authority, and which in Bengal is received also as of high authority, yielding only to the *Dáyabhagá* in those

points where they differ, was a commentary on the Institutes of Yájnavalkya" : *Collector of Madura* vs. *Mootoo Ramalinga*, 12 moore's I. A., 397, 435. Their Lordships further observe in the well-known Unchastity case of *Moniram Kalita* vs, *Keri Kalitani* 7 I. A., 115—I. L. R., 5 Cal., 776, that the Víramitrodaya a commentary of the Mitákshará school and a work of later date than the Dáyabhága "may also like the Mitákshára, be referred to in Bengal in cases where the Dáyabhága is silent".

Another important matter to be specially noticed with respect to an argumentative and controversial work like the Dáyabhága which is respected as authoritative, is, that the positions and conclusions maintained and deduced by the author from the passages of the Codes, cited by him are to be accepted as law, although the arguments whereby the same are supported may be deemed faulty, unconvincing, inconsistent or erroneous. It is worthy of special observation that it is only the positions and conclusions maintained and drawn by the author that are to be respected ; we shall not be justified in deducing fresh inferences from those texts and arguments, not drawn by the author himself. The argument whereby a particular position is established may be proved to be inaccurate and untenable ; but that will not affect the position itself which must be accepted and acted upon. The question to be considered by the Court is, what is maintained by the author, and not, how the same is maintained. The reasons may be good, bad or indifferent, but they are not to be regarded at all ; for, if the conclusion which appears to be drawn from them is clearly

expressed, then, although the precess of reasoning whereby the same is deduced may be quite unsound, it must nevertheless be followed. It should be borne in mind that the Dáyabhága is followed by the people of Bengal, not because the arguments in support of its doctrines are strong, reasonable, convincing, persuasive and unanswerable; but because the rules of law therein propounded are suitable to their feelings and sentiments. It should also be remembered that the real object of the commentators was, as has already been said, not to discuss the law such as is propounded in the Smritis, but to establish what they thought should be the law; and this was no doubt the same in many respects, as enunciated in the Smritis which however, in so far as regarded the innovations and changes introduced for the first time by a commentator, were modified and virtually repealed as it were, but under the garb and disguise of their interpretation—a fiction which must be resorted to wherever there is a rigid body of law unalterable in theory, but partly unsuitable to an altered state of society which is not and cannot remain stationary, but is always subject to changes in the course of time, though the same are slow among Hindus, one of the most conservative nations in the world.

This view that the courts are not justified in drawing fresh inferences from texts cited and arguments advanced, by the author in the Dáyabhága, that is, inferences not deduced by the author himself,—is maintained, and if I may presume to say so, rightly maintained by their Lordships of the Judicial Committee in the Unchastity case, who observe—"But even if the

words were more open to such a construction than they appear to be, their Lordships are of opinion that what they have to consider is not so much what inference can be drawn from the words of Catyayana's text by itself, as what are the conclusions which the author of the Dáyabhága has himself drawn from them. It is to that treatise that we must look for the authoritative exposition of the law which governs lower Bengal, whilst on the other hand nothing is more certain than that in dealing with same ancient texts, the Hindu commentators have often drawn opposite conclusions." *Moniram v. Keri Kalitani*, I. L. R. 5 Cal. 776, 785.

It is extremely to be regretted that in some cases dealing with the law of succession according to the Dáyabhága the foregoing considerations were entirely lost sight of. In the eleventh chapter of the Dáyabhága the order of succession to a man's property is explained. In order to introduce certain near and dear cognates in the order of succession, in preference to comparatively more distant agnates, the author relies, as one of the arguments supporting his views, on the doctrine of spiritual benefit which the author maintains is enunciated in two slokas of Manu, and a passage of Baudháyana. From the references to this doctrine in the arguments to support the positions of the different relations in the order of succession, no consistent principle can be deduced. In fact the author's object was to lay down an order of succession different in some respects from that in the Mitákshará, and in support of this order the author refers to the capacity for conferring spiritual benefit, as one of the reasons in his argument for the justification of the

changes introduced by him in the order. It is erroneous to say that the author's object was to establish a principle of spiritual benefit, which doctrine itself he gives up in the concluding portion of the chapter, where he maintains that the *order* maintained by him ought to be accepted by the learned, although his exposition of spiritual benefit might be rejected. Besides, there is no data from which a consistent principle could be deduced, such as is fancied to have been in the mind of the author, who no doubt asserts that, of two relations he who confers greater amount of spiritual benefit in a particular manner is to be preferred to the other ; but there is nothing in his work from which a case of contest between two relations for preference, which the author himself has not considered, can be settled, by means of the theory of spriritual benefit ; since it is absolutely impossible to calculate their relative capacity for conferring the same, where the author himself has not done so. I am unable to understand how, in the face of what the author himself expressly says in the eleventh chapter of the Dáyabhága, can it reasonably be maintained that the object of the author was to lay down therein the principle of spiritual benefit, and not an order of succession. The so-called principle deduced from the various references to the capacity for performing the Párvana Sráddha, in the Dáyabhága, has been so explained by the Court as to make it inconsistent with the order of succession, which cannot but be admitted to be laid down by the acute logical author in the Dáyabhága, to a certain extent, though not exhaustively. It may also be remarked here that the Párvana Sráddha, the capacity to perform which

it suited the purpose of the author to refer to, for maintaining the changes in the order of succession, has become obsolete among the Hindus and is not generally celebrated at all at the present day.

It should be observed that the courts have explained the law more correctly in later decisions, as regards the meaning of the term *Bandhu* used in Yajnavalkya's text on the order of succession; in fact, the exposition of the term in the Full Bench case of *Umaid Bahadur* (I.L.R., 6 Cal., 119) is founded on a principle which is contrary to that on which the Full Bench decision in *Amrita Kumari's* case (2 B. L. R., F. B., 28 = 10 W. R.), rests, which is no other than the so-called principle of spiritual benefit, but which is not only not recognised in the Mitákshará, but is expressly pronounced by its author to be unacceptable. The conclusions are right in both the cases, but the whole of the argument advanced by the court in the earlier case is virtually condemned and rejected as erroneous in the later decisions.

In the Full Bench case of *Guru Govinda Shaha Mandal* (5 B. L. R., 15 = 13 W. R., F.B., 47) both the Judges and the Lawyers erred in the view of the law, "**अन्धेनैव नीयमाना यथान्धाः**," *i.e.*, "like the blind led by the blind."

But what is most regrettable is that the error then committed should be perpetuated, and an erroneous admission by the pleader though very eminent who was subsequently elevated to the Bench and became a pre-eminent judge, and who argued the case before the Full Bench on behalf of the unjustly losing party,—should be

accepted as law, when the same leads to most absurd and unnatural results. And it is strange that a point should be deemed to be decided by a Full Bench that expressly omitted to decide it, because of the admission which was made at a time when the text enumerating *Bandhus* was altogether misunderstood. If the correct meaning of that term were known when the said case was decided by the Full Bench, and the order of succession explained in this work were known to the pleader or were accessible to the learned judges, or their Lordships' attention were otherwise drawn to the light it throws on the question for their consideration, then undoubtedly the learned pleader instead of making the admission he did, would have contended on the authority of this Dáyatattwa, that the position of his client's opponent who was the Uncle's Daughter's son, in the order of succession, is the same as in the Mitákshará, and that therefore he could not be preferred to his client who was an agnate, though a Sakulya, and the Court would have arrived at the right decision. I have said that the result is absurd, because if a particular order of succession is repugnant to the feelings of all Hindus without exception, it cannot but be pronounced absurd. Ask any Hindu of Bengal whether the fraternal nephew's son's son or his daughter's son is entitled to preference, and he will unhesitatingly answer the question in a manner contrary to that given by the Full Bench in the case of *Digambari* vs. *Motilal* I. L. R., 9 Cal., 563. Any one impelled by curiousity may make the experiment by putting the question in Bengali whether ভাইপোর পৌত্র বা ভাইপোর দৌহিত্র-is entitled to succeed, to

a Hindu whether he knows English or not, and he will find that one uniform answer will unhesitatingly be given by one and all without a single exception, in favour of the agnate descendant.

It is remarkable that those who imagine the principle of spiritual benefit to be the key to the Hindu law of inheritance lose sight of the fundamental doctrine involved in the very definition of the term Dáya or heritage, which means property left by a deceased person devolving on a living person by reason of the *relationship* of the latter to the former. It is *relationship* not spiritual benefit, that forms the foundation of inheritance in Hindu law, as in every other system of Jurisprudence : nor is it the principle of spiritual benefit, but the capacity to perform a particular obsequial ceremony, that is referred to in the Dáyabhága as one of the arguments in support of the order of succession of a few relations only. To the question,—who are heirs ? The answer is—"Relations are heirs." To the question—"In what order are the relations to take ? The answer given in the Mitákshará, is—"In the order of the proximity of their relationship ;" while the Dáyabhága adds that the capacity to confer spiritual benifit by the performance of the Párvana Sráddha must also be taken into consideration to determine the order in which certain relations are to inherit. It should be noticed that the capacity to confer spiritual benefit by the performance of the Adya and the like Sráddhas, other than the Párvana Sráddha, which are actually performed, is not to be taken into consideration at all, although the same are of far greater benefit to the soul

of the deceased than the latter, which are seldom if ever performed in these days, by even the high castes, while among the lower classes or the Majority of the Hindus the same have become obsolete or things of the past.

The author of the Dáyabhága has dealt with the order of succession of different relations in the successive Sections of the Eleventh Chapter. In Section one, the Widow's Succession is discussed at considerable length; in Section two, that of the daughter and daughter's son; in the third, that of the father; in the fourth, that of the mother; in the fifth, that of the brothers, of half and whole blood, as well of those that are joint or separated, or re-united after separation; and in the sixth, of other relations. In the case of every one of the relations, there is some peculiarity and qualification as regards his or her capacity to confer spiritual benefit; and in some, other grounds are mentioned justifying preference. It is impossible to discover a consistent principle of spiritual benefit, which may be said to be the foundation of the order of succession. The attempt to deduce a general principle as being one that logically follows from the various cases in which reference is made to the capacity to confer spiritual benefit, as well as to some other matter, dealt with in the said Sections,—is analogous to what the Lord Chancellor remarks, ought not to be done, as regards deduction of any principle from the generality of expressions in judgments in particular cases,—in the following passage,—

"Now before discussing the case of *Allen v. Flood*, and what was dicided therein, there are two observations

of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all".—*Quinn* v. *Latham*, L. R., Appeal Cases 1901, p. 495, 506.

These remarks made by the Earl of Halsbury apply *mutatis mutandis* to the *ratio decidendi* in *Guru-gobinda Shaha Mundals* case. The discussions in the Dáyabhága regarding the inheritance of particuiar relations or groups of relations are like so many judgments applicable to those relations only, and all the arguments on the basis of the doctrine of spiritual benefit, found in any part of the chapter XI, are put forward to support the succession of those relations only. "The generality of expressions which may be found there are not intended to be expositions of the whole law". For we find that in almost every instance some other consideration is introduced to qualify the particular capacity for spiritual benefit which again is absolutely wanting in the female heirs,—a fact negativing

the theory of the said capacity being the criterion of inheritance. The endeavour to arrive at a logical generalisation from the references to the spiritual benefit cannot but be regarded as most unreasonable and illogical, when it is inconsistent with the order of succession maintained by the author, who invokes the aid of the spiritual benefit as an argument in support of the said *order*. It proves the Lord Chancellor's remark that there is no logic in law. The argument—that the exposition of the principle of spiritual benefit and the effect given to it by the Full Bench would lead to the above result,—is met thus,—"But this circumstance (that is, the interference of that principle with the order of succession specified in the earlier part of Ch. XI), even if true, cannot be accepted as a sufficient reason to justify the total exclusion of one single individual who is really competent to satisfy all the requirements of that principle. If in any case which may arise hereafter, it should become necessary for us to determine the precise position which the son of a paternal uncle's daughter is entitled to hold in the order of succession, the question would fairly arise, namely, whether the details of a work like the Dayábhága ought to be permitted to over-ride the principle upon which it is admittedly based".—13, W. R.49,63.

The whole argument on both sides,—namely, that the paternal uncle's daughter's son is not an heir at all, because he is not mentioned to be so, on the one side, and that he is an heir because he is capable of conferring spiritual benefit, on the other side,—was equally fallacious. The paternal uncle's daughter's son is an

heir, not because he satisfies all the requirements of the so-called spiritual principle, but because he bears a particular blood relationship to his maternal grand-father's brother's son. For, all heirs do not confer spiritual benefit, nor do all who confer spiritual benefit are entitled to become heirs ; and the doctrine is used by the author, not for the purpose of finding out who are heirs, but for the purpose of supporting the *order* in which certain heirs are to inherit. It has already been said that to the question who are heirs the answer is, Relations are heirs, in fact, the very definition of the term *Dáya = heritage,* proves this. After some explanatory comments on the text of Nárada, defining Partition of Heritage the author concludes as to the import of Heritage by saying,—"Therefore, the word *Dáya* = heritage is, by usage, employed to signify, property in which ownership *caused by relationship* to the previous owner arises on the extinction of his ownership (by death natural or civil.")—See Dáyabhága ch. I., para 5.

A careful perusal of the whole chapter XI will convince the reader that the author laid down a particular *order* of succession, and directed the entire argument to maintain the said *order* which however was intended, not to be exhaustive, but to extend down to the "*maternal uncle and the like*" and so illustrating the order in so far as it was different from that of the Mitákshará ; but he intended to leave the rest with respect to which there was no controversy, in the same state as in the said universally respected treatise, only supplementing it with a few observations in the course of explaining the Smriti-texts on succession, cited by

him, and thus seeming to superficial readers to deal with the law of succession exhaustively. He relied no doubt, on his own peculiar view of spiritual benefit, with which, he knew, the learned could not be satisfied ; but he maintained that even if the same be abandoned, still the *order* of succession specified by him should be accepted as the one intended by the sages.

As regards the doctrine of spiritual benefit, upon which arguments are founded by Jímútaváhana for supporting the order of succession, introduced by him, it should be noticed that it owes its origin to the novel interpretation of the text of Baudháyana cited by him in Chapter XI, Section I, paragraph 37, and explained in the next paragraph 38. It appears to have been unknown to any commentator who wrote before him.

It is no doubt true, that the Hindu Shástras extol the importance of male issue in a spiritual point of view. There are many texts in the Smritis bearing on this subject ; for instance,

Manu (9, 138) and Vishnu (15, 43) declare,—

पुन्नाम्नो नरकाद् यस्मात् पितरं त्रायते सुतः ।

तस्मात् पुत्र इति प्रोक्तः स्वयमेव स्वयम्भुवा ॥ मनविष्णू ।

"Since a son delivers (tráyate) the father from the hell called *Put ;* therefore he is named Put-tra or *Put*-deliverer, by the self-existent himself."

Similarly, Hárita says,—

पुन्नामा निरयः प्रोक्तश्छिन्नतन्तुश्च नैरयः ।

तत्र वै त्रायते यस्मात् तस्मात् पुत्त्र इति स्मृतः ॥ हारीतः ।

"A (certain) hell is called by the name of *Put ;* and one destitute of issue goes to (that) hell : a son is

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therefore known as *Put-tra,* because he delivers (his father) from the same."

So Sankha and Likhita declare,—

पितृणाम् अनृणो जीवन् दृष्ट्वा पुत्रमुखं पिता ।
स्वर्गी स तेन जातेन तस्मिन् संन्यस्य तदृणं ।
अग्निहोत्रं त्रयो वेदा यज्ञाश्च शतदक्षिणाः ।
ज्येष्ठपुत्रप्रसूतस्य कलां नार्हन्ति षोड़शीं ॥

"A father becomes while alive exonerated from *the debt to his ancestors,* upon seeing the face of a son (after birth) : by means of that son born (to him), he becomes entitled to heaven, devolving on the son that *debt (to ancestors)* : The maintenance of the holy fire, the three Vedas, and sacrifices with payment of large fees to the officiating priests, are not entitled to have even the sixteenth part of the efficacy of the birth of an eldest son."

Likewise Manu (9, 137), Sankha, Likhita, Vishnu (15, 45), Vasishtha (13, 5), and Háríta ordain,—

पुत्रेण लोकान् जयति पौत्रेणानन्त्यम् अश्नुते ।
अथ पुत्रस्य पौत्रेण ब्रध्नस्याप्नोति पिष्टपं ॥

"By a son, (a man) conquers worlds (*i. e.* secures heavenly regions) ; by a son's son, (he) obtains immortality (literally, endlessness) ; and by a son's son's son (he) reaches the sun's region."

So also Yájnavalkya (1, 78) declares,

लोकानन्त्यं दिवः प्राप्तिः पुत्र-पौत्र-प्रपौत्रकैः ।
यस्मात्, तस्मात् स्त्रियः सेव्या, कर्त्तव्याश्च सुरक्षिताः ॥

"Since, immortality in this world (by means of the continuation of lineage), and attainment of heaven, are secured) by son, son's son and son's son's son, therefore wives should be approached, and should be guarded well."

जायमानो ह वै ब्राह्मणस्-त्रिभि-र्ऋणै-र्ऋणवान् जायते।
ब्रह्मचर्य्येण ऋषिभ्यः, यज्ञेन देवेभ्यः, प्रजया पितृभ्यः,—एष वा अनृणो-यः पुत्री यज्वा ब्रह्मचारी च ॥ श्रुतिः।

"A Bráhmana on being born becomes a debtor in three obligations: to the Rishis (who are the propounders of the sacred books), for studentship (to peruse the same); to the Gods, for sacrifices; to the ancestors, for progeny: he becomes free from the debts, who has son, who has performed sacrifices, and who has studied the Vedas."

The object which the Hindu sages had in view in propounding the above doctrine, was to place marriage on a spiritual basis, or in other words, to thrust into prominence the spiritual aspect of the fundamental institution, upon which the continuance of the human race rests. The whole Sanskrit literature is embued with this religious spirit that was imparted by the sages to the holy relation upon which the propagation of the human race depends. The connection of the sexes is not to be deemed primarily a source of sensual pleasure, of which the birth of children is an undesirable though inseparable accident; whereas the perpetuation of lineage should be regarded as its primary object, although the Providence has in its infinite wisdom combined with

it an imperious craving, the fulfilment of which is attended with pleasurable sensibility, while securing the attainment of the primary object. The Hindu sages endeavoured to place the responsibilities of marriage and care of children on a spiritual basis, so that persons might not be averse to the same, while engaged in the pursuit of the pleasures attending the commerce of sexes.

It should be remarked that the spiritual benefit derived from male issue, as set forth in the above texts, has nothing whatever to do with the offerings of oblations of food or of libations of water, in any Sráddha and the like ceremony, that may be performed by them, after the death of the father or other ancestor, inasmuch as the benefit arises on the very birth of male issue, and does not depend on anything to be done by them. There are, however, passages in the Sástras, that the souls of deceased ancestors are anxious that their lineage should continue to exist in this world, and are pleased when they celebrate the ancestor-worship, or even offer libations of water to them.

There is, however, no authority in the Sástras to support Jímútaváhaná's theory of spiritual benefit derived by a person from the offering of *Pinda* or oblation made to any of the three paternal ancestors of a deceased person, by a *collateral* relation while performing the Párvana Sráddha ceremony, except his arbitrary interpretation of a text of Baudháyana, which cannot convey the meaning he puts upon it, and which will presently be considered. And as regards the benefit derived by a deceased person from the offering of Pindas, made to his maternal ancestors, by the maternal

uncle and the like, not only there is no authority in support of it, to be found in the Sástras, but it seems to be opposed to a well-known principle laid down by them.

The text of Baudháyana upon which the doctrine of spiritual benefit is founded is as follows,—

प्रपितामहः पितामहः पिता स्वयं सोदर्य्या भ्रातरः, सवर्णायाः पुत्र-पौत्र-प्रपौत्राः । एतान् अविभक्त-दायादान् सपिण्डान् आचक्षते । विभक्त दायादान् सकुल्यान् आचक्षते । सत्स्वङ्गजेषु तद्गामी ह्यर्थो भवति । (तदभावे सपिण्डः) । सपिण्डाभावे सकुल्यः । तदभावे चाचार्य्योऽन्तेवासी ऋत्विग् वा हरेत् । तदभावे राजा ॥

Dáyabhága Chapter XI, Section I para 37.

The plain meaing of the text is shown by the following translation,—

"The paternal great-grandfather, the paternal grandfather, the father, the man himself, his uterine brothers, his son, son's son, and son's son's son by women of the same caste : all these enjoying the undivided *heritage* (Dáya) are pronounced *Sapindas* (or those living in the same mess) ; those who enjoy divided *heritage* are called Sakulyas (or those having the same land for cultivation, or belonging to the same family.) Male issue of the body being left, the property must go to them ; on failure of *Sapindas*, the *Sakulyas* ; on failure of them, the preceptor or the pupil or the priest shall take (the property) ; in their default the king."

In this translation the word *Dáya* is taken in the sense of *heritage* which is its plain, ordinary and natural meaning, and which alone is compatible with the context, and which every Sanskritist would put on the word, if he has not read the interpretation put on

the above text by the author of the Dáyabhága. For, Jímútaváhana puts a novel construction of his own, upon that part of the above passage, which has been rendered above into—"all these enjoying the undivided *heritage* are pronounced *Sapindas* ; those who enjoy the divided *heritage* are called *Sakulyas*"—by taking the word Dáya meaning heritage in the new sense of *Pinda* or oblation, entirely evolved out of his inner consciousness ; since in no other work in the Sanskrit language, is that word used in that sense. There is no Lexicon, Thesaurus, Vocabulary or Dictionary of the Sanskrit language in which the word *Dáya* is found to bear the meaning of *Pinda*. The passage according to him would mean,—"all these enjoying the *undivided oblation* are pronounced *Sapindas* ; those who enjoy the *divided oblation* are called *Sakulyas*."

And thereupon he builds a novel theory of the effect of the *Sapindí-karana* ceremony which, as understood by all other Sanskrit writers on the subject, has the only effect of entitling the soul of the deceased, for whom the ceremony is performed, to pass from the *Preta-loka*—or the region of the next world to which the soul of a person goes just after his death—to the *Pitri-loka* or the higher region of the *Pitris* or paternal ancestors, where the spirits of the deceased persons dwell, for whom the sixteen Sráddhas ending with and including the *Sapindi-karana*, have regularly been performed by their surviving descendants or other relations in this world. But it was left to the author of the Dáya-bhága to discover a novel effect of the last ceremony, which had been entirely unknown to all the previous

commentators, namely, that since the performance of of the *Sapindi-karana* ceremony, the soul of a person participates with the souls of his three paternal ancestors in the oblations that may be presented to them by any of their descendants whether agnate or cognate. The doctrine is very peculiar ; none of the ancestors takes any share of any *Pinda* offered to a descendant. He who when alive offered a *Pinda* to a paternal ancestor, does after death partake of a *Pinda* offered to that paternal ancestor by any other of his descendants either in the male or in the female line. And although a person while alive may offer *Pindas* to his maternal ancestors, he does not after death share in their oblations, because there is no *Sapindana* or mixing up of his *Pinda* with those of the maternal ancestors, such mixing up being confined with those of the paternal ancestors only. If the *Sapindana* or the mixing of the four *Pindas*—one being intended for the soul of the deceased for whom the *Sapindi-karana* ceremony is celebrated, and the three others for his three paternal ancestors one for each,—had the effect of entitling it to enjoy the oblations offered to the paternal ancestors, why should not the latter *vice versa* enjoy the oblations offered to the former and also to each other. There is neither reason nor rhyme in the arbitrary and dogmatic view which has emanated from the imagination of Jímútaváhana.

The foregoing texts show that the Shástras impose a religious duty on every man to have a son. There is also authority recommending the possession of more sons than one, whom a person should leave behind him

at his death to perpetuate the lineage and to perform his obituary rites and to conduct the periodical worship of his *paternal* ancestors. It is worthy of special remark that a man's son cannot confer any spiritual benefit on that man's *maternal* ancestors. For, the Ancestor-worship is a ceremony entirely in honour of the *paternal* ancestors, in which originally the maternal ancestors had no place; though later on, a man was enjoined to worship his own three maternal ancestors also, after the paternal ancestors.

For instance, Manu ordains.—

त्रयाणाम् उदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तते ।
चतुर्थः सम्प्रदातैषां पञ्चमो नोपपद्यते ॥ ९, १८६ ।

"To three, should the libation of water be offered; for three, is the funeral oblation of food ordained: the fourth is the giver of them, the fifth has no concern in them."—9, 186.

This text can apply to the three *paternal* ancestors only, the latter sentence shows that it cannot refer to the three maternal ancestors; because, the words "fourth" and "fifth" are used in the text, relatively to the remotest of the three ancestors to whom the offerings are to be made; but the remotest of the three maternal ancestors being the maternal great-great-grand-father, the person who is to make the offerings would be the "fifth" relatively to him, according to the Hindu mode of calculating degrees, which is the same as that of the canonists, and according to which those two words have been employed in the text. Hence, it is clear that this text of Manu cannot reasonably be construed

to relate to maternal ancestors who could not be the objects of Ancestor-worship ordained by Manu in this text. The cognates were excluded as well from this ceremony as from inheritance, according to Manu's code.

Later on, men were enjoined to include the maternal ancestors in the Ancestor-worship, thus,—

पितरो यत्र पूज्यन्ते तत्र मातामहा ध्रुवं ।

"Where the paternal ancestors are worshipped, there the maternal grandfathers should certainly be worshipped."

The son whom a man is bound to leave behind him, for discharging his debt to his paternal ancestors, can render no spiritual service to his maternal ancestors, because the son is required to worship his own, and not his father's, maternal ancestors, when celebrating the ancestor-worship. Therefore a man is not required, nor competent, to provide for the performance of any religious ceremony for the benefit of his maternal ancestors ; his duty in that respect dies with him. His religious obligation is not the same as regards the two sides of the ancestors. In fact, a man's *debt to ancestors* which is discharged by the birth of a son, does not at all refer to the maternal ancestors who cannot derive any spiritual benefit from that son.

How then can a man be said to be under a religious obligation to his maternal ancestors to provide for the offering of *pindas* to them after his death, and also to derive spiritual benefit from the offering of obsequial oblations, made to the maternal ancestors, by the maternal uncle and the like, who in doing so, merely discharge their own obligation to the same ancestors as their

male issue. The maternal uncle and the rest whose religious duty it is, to perform the worship of their paternal ancestors, can by no means be supposed to perform the ceremony vicariously for their sister's son and the like. Besides, there is a well-known maxim of Hindu religion, namely,—**शुचि-तत्कालजीवी स्यात्**, which means, "Religious duty attaches to a person who is alive at the time (of its performance) and is unpolluted". This maxim negatives the idea of the subsistence of a person's religious duty towards his maternal ancestors, *after* his death. There is absolutely no authority or reason, therefore, to support the position that a man is spiritually benefited by the celebration of Ancestor-worship by the maternal uncle and the like maternal relations.

What again is the meaning of the words "*divided*" and "*undivided*" qualifying the term "*oblation*" the novel sense in which Jimútaváhana wants to take the word *dáya* in Baudháyana's text. It is also impossible to understand any reasonable sense of the expression "participating in, or partaking of, *undivided* or *divided oblations.*" The oblations that are presented to the three paternal and the three maternal ancestors in the Párvana Sráddha ceremony or the periodic Ancestor-worship in every lunar month,—are always *divided*, in the sense that a separate oblation is presented to each of the three ancestors on either side. It is this Sráddha ceremony on which Jímútaváhana's doctrine of spiritual benefit is founded. Before this ceremony can be performed for benefiting, in the way maintained by the author, a deceased person, the *Sapindíkarana Sráddha* rite must be celebrated for the deceased, on the first

lunar anniversary of his death. The performance of this rite is necessary for enabling the soul of the departed to leave the *Preta-loka* (or Hindu Purgatory) where it goes just after death, and enter the *Pitri-loka* or the region of the *Pítris* or celestial spirits, and thenceforward to become an object of the periodic Ancestor-worship. In this ceremony also, four separate oblations are made at first, and then an union of them is effected, symbolical of the association of the soul of the departed with the *manes* of his paternal ancestors, the oblations being the symbols of their celestial bodies. In this *Sapindí-karana* ceremony alone, the oblations can be said to be *undivided* by reason of the mixing of the four *pindas.* But the same cannot be predicated of the oblations in the Párvana Sráddha the foundation of the theory of spiritual benefit propounded in the Dáyabhága.

As regards the "*partaking of the oblations*," the author of the Dáyabhága says that the uses of a man's wealth are twofold, namely, *first*, personal enjoyment by himself, and *second*, donation or charity or enjoyment by others according to his pleasure. This proposition in its ordinary sense is unexceptionable. But then he goes on to say that after death also, a person may be said to enjoy his wealth if the same be applied to the performance of the *Párvana-Sráddha*, the oblations offered in which may be enjoyed by him, in the fanciful manner depicted by him ; and if that also is not possible by reason of the default of relations that could and would offer such oblations, then similar enjoyment by his three maternal ancestors, of oblations offered by their male issue at the expense of his wealth inherited

by them would resemble *charity* meritorious in a spiritual point of view, and benificial to his soul.

Thus the author asserts a low selfish principle of inheritance, which is not only unsupported by the Shástras, but is contrary to the fundamental doctrines of Hindu religion. How do the ancestors enjoy the oblation? Certainly not in the physical sense, for the *pinda* does not show its enjoyment by any one, it is not affected in any way, either in size, quantity or quality. What does the ceremonial itself prove: it shows that the Ancestor-worship does not differ in the least from the worship of Gods by the Hindus. As in the worship of Gods, so in that of the ancestors, dishes of choicest food are placed where they are supposed to come on invokation, the preparation of which is intended to afford evidence of their reverence and earnest desire to please them; and it is also prayed that the Gods and the ancestors may be pleased to accept and partake of the same, and be satisfied. But they are believed to be pleased by the mere sight of the things, and not to partake of them, which are ultimately distributed among Bráhmanas. That the ceremony is performed for the purpose of receiving benefits from the ancestors, and not for the purpose of conferring benefits on them, is proved by the prayers that are in the course of the ritual addressed to them when they are dismissed at the conclusion of the ceremony. The prayers are—

"ॐ एत नः पितरः सौम्यासो—गम्भीरेभिः पथिभिः पूर्व्विणेभिः। दत्तास्मभ्यं द्रविणे ह भद्रं रयिञ्च नः सर्व्ववीरं नियच्छत ॥"

"Om ! come O our auspicious fathers, by the deep ancient paths, and give us blessings about (our) property and grant us wealth and many heroic sons.

See ritual of Sráddha among followers of the Sama-Veda.

and

दातारो नोऽभिवर्द्धन्तां, वेदः सन्ततिरेव च ।
श्रद्धा च नो मा व्यगमत्, बहु देयञ्च नोऽस्त्विति ।
अन्नञ्च नो बहु भवेद्, अतिथींश्च लभेमहि ।
याचितारश्च नः सन्तु, मा च याचिष्म कञ्चन ।
अन्नं प्रवर्द्धतां नित्यं, दाता शतञ्च जीवतु ॥
तेषामस्त्वक्षया तृप्ति-र्येभ्यः सङ्कल्पिता द्विजाः ।
एताः सत्याशिषः सन्तु ॥"

"वाजे वाजेऽवत वाजिनो नो धनेषु विप्रा अमृता ऋतज्ञाः ।
अस्य मध्वः पिबत मादयध्वं तृप्ता यात पथिभिर्देवयानैः ॥"

"May our donors prosper ; may the sacred learning, male issue, and faith in the teachings of the Shástras be never wanting in us ; may our things for making gifts be numerous ; may our food be abundant ; may we get guests (seeking our place for entertainment) ; may many persons beg of us ; may we never (be under the need to) beg ; may our stock of food increase every day ; may the donor live a hundred years ; may those (our forefathers) represented by the Bráhmanas (appointed in that behalf) have unceasing gratification : may these blessings be realized."

"In every battle do (ye) protect us fighting for property (oh !) wise and immortal (fathers), aware of

the reward of pious rites; drink (ye) this honey and be delighted, and being satisfied depart by paths used by Gods."—Raghunandana's Sráddha-Tattwa.

The fundamental doctrines of Hindu religion are :—the eternity of the soul; its confinement in a body ethereal or mundane such as that of a God or of a man or of any lower animal, until *Moksha* or liberation; its metempsychosis or transmigration from one body to another; and its subjection to its *Karma* or acts and omissions in its past states of existence while living as a human being, which produce the *Adrishta* or Invisible Dual Force of virtues and vices, determining its condition of happiness and misery, and its assumption of different forms of body. According to the theory of Adrishta, which is universally known to all Hindus from the highest to the lowest, every man is the builder of his own condition and fortune. The millions of Hindus meeting with untimely death after suffering indescribeable miseries at a famine, curse only their own selves as the greatest sinners in previous states of existence, and therefore suffering untold woes. They do not blame either the Government or the landlords or any other person for their terrible misfortune, which they ascribe to their own past misdeeds awarding the same as condign punishment for expiating them; and they die like philosophers, without even thinking of resorting to violence for procuring good for themselves and their dear ones, from their lucky neighbours possessing the same in abundance.

The doctrine of spiritual benefit derived from funeral oblations offered in the Párvana Sráddha that

may be, performed by relations, at their option, is utterly inconsistent with the fundamental doctrine of *Karma* and *Adrishta* set forth above. According to the ritual prescribed in comparatively recent treatises, the sixteen Sráddhas ending with the *Sapindí-Karana* celebrated on the first lunar anniversary of a deceased person, which are performed for a deceased individual alone, appear to stand on a different footing; and the Hindu law also makes the performance of them obligatory on the heir out of the estate left by the deceased. The soul of a deceased person, for whom these obituary ceremonies have been performed, is popularly believed to pass from the *Preta-loka* or region for the departed or the world of ghosts or Purgatory, to the Pitri-loka or region for the manes of ancestors, or heaven. Had the effect of the Parvána Sráddha been such as is explained in the aforesaid passage of the Dáyabhága, the regular performance of the same should have been made legally obligatory on the heir. But the author of that work was perfectly aware of the weakness of his argument in support of the so called principle of spiritual benefit; and accordingly, he says that if the learned be unsatisfied with the doctrine, that the capacity for conferring spiritual benefit is the principle or criterion of the order of succession, yet the order of succession set forth by him should be accepted as the one deducible from the texts cited by him: Ch. xi, Sect. vi, para 33.

Hence the *order of succession* laid down in the Dáyabhága should be considered without any reference to the so-called principle of spiritual benefit, as in fact

there is no such consistent principle. The order is very clearly laid down ; and what was intended by the seemingly vague expession " the maternal uncle *and the rest*," is explained by Raghunandana in this treatise, and by Srikrishna in his commentary on the Dáyabhága as well as in his Dáya-krama-sangraha leaving aside the spurious passages or interpolations that were not parts of the original text of this work, and therefore not found in all manuscript copies as is stated by Colebrooke. Looking to the author's argument introducing in the order of succession, "the maternal uncle and the like," just after the paternal great-grand-father's daughter's son, that term must be taken to mean the meternal uncle, his son, and his son's son ; because they that confer the spiritual benifit on the *three* maternal ancestors to whom the deceased proprietor had to offer oblations during his life, are to become his heir's by reason of their performing, as it were, his duties vicariously. As the three male issue of a person confer the highest amount of spiritual benefit and as the maternal grandfather is the ancestor principally considered, those three are the only maternal relations that may come under the principle. But if the maternal-grandfather is alive, then because his male issue are not entitled to perform the Sráddha ceremonies during his life, and becausc secular benefit is perhaps as much important as the spiritual one, also because he is nearer in relationship, therefore he ought to succeed in preference to his descendants. Accordingly he is so placed in the order of succession, both by Raghunandana and Srikrishna. In fact these four maternal relations only were intended to

be introduced reciprocally to the four grandsons by daughter, of the proprietor himself and of his three paternal ancestors, as heirs in preference to the comparatively more distant agnates. And this appears to be the view, taken by Raghunandana, of the Dáyabhága law, of which the substance is given by him in this work, and this is the traditional interpretation of the Dáyabhága law as has all along been understood by the Panditas of the Bengal school. This view is also taken by Sríkrishna the well-known commentator of the Dáyabhága, as appears from his Synopsis of the order of succession appended to his commentary on Ch. XI of the Dáyabhága, and also from his Dáya-Krama-Sangraha omitting however the interpolated passages which, Colebrooke says, were not found in all manuscript copies of the same.

Difficulty, however, arose in consequence of the omission in the Dáyabhága of other cognates ; and that gave rise to the Full Bench decision already referred to.

The object with which the translation of this work was published was to remove that difficulty, as well as the doubt created by the Full Bench as regards the whole order of succession. The object has been attained but partially : the order of succession down to the paternal great-grand-father's daughter's son, which is very clearly expressed in this treatise has been permitted to stand notwithstanding the revolutionary opinion expressed by that Full Bench. It is respectfully submitted that it would be highly desirable and satisfactory if the mistake into which the Full Bench was betrayed, be entirely corrected by the High Court.

It may be interesting to trace the cause of the origin of a new school of law in Bengal, different from that of the rest of India. The reason why this change of law was introduced and accepted in Bengal is to be sought in the social history of the two highest castes of the Bengali Hindus. A'disúra one of the Hindu kings of Bengal became sorry to find no Bráhmana within his territory, so well versed in the sacred literature and the ceremonial of sacrifices, as to be able to enlighten him on the subject of the *Puttreshti* sacrifice, *i. e.*, the sacrifice by the performance of which the birth of son may be secured, or to be able to perform the same in the prescribed mode. Buddhism had prevailed in Bengal for many centuries before the time of A'disúra, and appears to have been adopted by all classes excepting the Bráhmanas who were the greatest opponents of it, which though as a system of religion is really a branch of Hinduism, yet abolished the usage of hereditary caste or Bráhmanism, and preached equality by birth, and personal distinction based on possession of virtues, and thus laid the axe at the root of the Bráhmanical claim for inherited superiority, and necessarily turned them into its bitterest enemies. But the spread of Buddhism among other classes affected the Bráhmanas also, who could not be expected to learn the Shástras relating to the sacrifices, or to acquire the practical training for performing the same, while the people did not want to have them performed by their aid. The king of Bengal therefore had to request the king of Kányakubja or Kanauj to send him five learned Bráhmanas familiar with the sacred literature, and capable of performing as officiating priests all the Vedic

sacrifices. Accordingly five learned Bráhmanas came from Kanauj to Bengal, and with them came also five learned Káyasthas sent probably because they were virtuous members of the same caste with the king of Bengal, who had sent for them also. The Bráhmanas were highly respected by the king who was impressed with the evidence of their learning and occult power. The King was also pleased with the Káyasthas on account of their virtues and high attainments. To the former, the king made grants of many villages ; and on the latter, he conferred high appointments in his state ; and thus they were induced to settle in his territory where they became the leading members of their respective castes.

These five Bráhmanas and five Káyasthas were respectively the ancestors of the present high-caste Bráhmanas and high-caste Káyasthas of Bengal. There was intermarriage between these new comers and the old Bráhmanas and Káyasthas, respectively. The new comers and their descendants held a higher social position than their respective caste people that had been settled here from before. Poligamy prevailed amongst the male descendants of the new comers, to whom members of the original castes eagerly gave their daughters in marriage, for raising the social status of their families. Many of these daughters used to continue to reside in their father's house, where their husbands either resided with them or approached them from time to time. Thus their sons were born and bred-up in their maternal grand-father's house, and were provided for by him. And in this way arose a closer tie of

connection with cognate relations, among the leading members of the two highest castes.

This furnishes us with the reason, why in Bengal the Law of succession was changed in favour of the dear and near cognates.

But though a person may be born and bred up in his mother's father's house, still it is with the maternal grandfather and his male issue only that the person's connection becomes closer, and not with their collateral relations, who have good reasons to be displeased with him and with his mother. A daughter residing in her father's family enjoys liberties that are denied to females coming into the family as daughters-in-law, to whom her conduct is often over-bearing and annoying, which is silently endured at first so long as they are young. But when these daughters-in-law grow up and assume the possition which is naturally theirs in their husband's house, disagreements spring up fomented by this daughter, causing disruption of the family and separation of her father's brothers from him. And although she continues to live joint with her brothers for some longer time, still as she is her brother's wife's ननन्दृ *na-nandri* = relation *impossible to please*, they cannot live together in harmony, and so she is ultimately provided with a different house to live there with her children separately from her brother's family. Nor can her sons though living near her relations, be socially intimate with them ; for they bear a different family name, and have not to observe any mourning for their maternal grandfather's collateral relations on death, and they observe mourning for three days only even on the death of their

mother's father. On these and other occasions, the fact that he is a stranger to the family, becomes remarkably conspicuous. But though thus living at a different place separate from their agnate relations, they have to observe the full period of mourning on the death of an agnate relation within seven degrees counted in the Hindu mode of computation. The tie of agnatic connection is very strong among the Hindus, and is not much weakened even under the foregoing adverse circumstances, but completely re-asserts itself among the descendants of the persons born and bred-up in the family of their mothers' father, who become the root of joint families on the agnatic basis, of their male descendants.

We are now in a position to understand why Jímúta introduced the change of law in the way set forth above: it was for the benefit of the members of Jimúta's own class, who were the leaders of Hindu Society; and the same being acceptable to the leading members of the two foremost castes, became the law of Bengal without difficulty. For, "यद्-यद्-आचरति श्रेष्ठस्तत् तद् एवेतरे जनाः"— ordinary people follow the usages of the leading persons.

Jímútaváhana was the 7th descendant of Bhatta-náráyana one of the said five Bráhmanas; he was the minister and administrator of Justice during the reign of Vishwaksena, and flourished in the last quarter of the 11th and the beginning of the 12th century of the Christian era. For this account, my thanks are due to Pandita Pramathanáth Tarkabhúshana the very learned professor of Smrití in the Calcutta Sanskrit College, who has found out the age of Jímúta from certain passages in his work called Kála-Viveka, and kindly

informed me of the same, and also to Pandita Lálmohan Vidyánidhi the author of the well-known work called Sambandha-Nirnaya who furnished me with the following passage of the Kula-Káriká of Eru Misra, or the Social History of the Bengali Bráhmanas by Eru Misra, which gives a succinct account of Jímútaváhana :—

शाण्डिल्यगोत्रजः श्रेष्ठो भट्टनारायणः कविः । तस्यात्मजो वटुर्नाम पारिग्रामी बहुश्रुतः ॥
वटुकस्य त्रयः पुत्राः मणिभद्रस्तु शेषकः । मणिभद्र-सुतस्तस्य पारिवंशसमुज्ज्वलः ॥
पारिग्रामे वटुजानां मणिभद्रो जगद्गुरुः । भद्रमुनेः सुतो जातः धनञ्जयो महाकविः ॥
तस्यान्वये विधुर्जातः कवीनाञ्च शिरोमणिः । तस्य पुत्रो हलो नाम वङ्गराज्ये प्रतिष्ठितः ॥
पारिकुल-मुनिश्रेष्ठः सर्व्वत्र बुधपूजितः । तस्य पुत्रः सुधीः श्रीमान् चतुर्भुजः सदा शुचिः ॥
विल्वमङ्गल-जीमूतौ चतुर्भुजसुतावुभौ । तस्मिन् काले वङ्गदेशे जीमूतश्चतुरग्रधीः ॥
गौड़भूमी-न्द्रामात्यः प्राड्विवाक इतीरितः । तद्बुद्धिर्वेदवेदाङ्गे सूक्ष्मा सूक्ष्मतमाऽभवत् ॥
गौड़राज्ये तदा राजा विश्वक्सेनो महाव्रतः । प्रजानां समुदाचारे तथा संशयनाशने ।
निबन्धो दायभागः स जीमूतेन कृतस्तदा ॥

एरुमिश्रस्य कुलकारिका ॥

"Bhatta-naráyana (one of the five Bráhmanas) was descended from the *Sándilya Gotra* and was a distinguished poet. His son was Batu by name who was very learned and was settled in the village Pári. Batuka had three sons, of whom Manibhadra was the last; his son Manibhadra was the glory of the Pári family; Manibhadra among the sons of Batu in the village Pári, became the preceptor of the world. The great poet Dhananjaya was born as son to the sage Bhadra, in his lineage was born Bidhu the chief of poets. His son by name Hala was distinguished in the kingdom of Bengal, the best of the sages of the Pári family, and respected everywhere by the learned. His son Chaturbhuja was learned, prosperous and always pure. Chaturbhuja had two sons Bilwa-mangala and Jímu'ta. At that time in Bengal Jímu'ta who was endowed with the highest intellectual capacity mastering all subjects became the minister of the king of the Gaura country and was celebrated as administrator of justice. His keen intellect became

keenest in the Vedas and the Vedángas; at that time in the kingdom of Gaura, Viswaksena was the king celebrated for austerities. It was at that time that the well-known commentary Dáyabhága was composed by Jímu'ta for (the purpose of introducing) good usage among people and for removal of doubts."

Kula-Káriká of Eru Misra.

Jimútaváhana was an inhabitant of the village Pári-gráma situated on the southern bank of the river Ajay, at a distance of about five miles in the north-easterly direction from the Gooskara station in the Loop Line. It is included within the district of Burdwan.

In Pandita Bharat-chandra Síromani's Edition of the original Dáyabhága with six commentaries there is the following sloka in the Peroration at the end of the work,—

पारिभद्रकुलोद्भूतः श्रीमान् जीमूतवाहनः ।
दायभागं चकारेमं विदुषां संशयच्छिदे ॥

meaning "The fortunate Jímútaváhana sprung from the Pári-Bhadra family, composed this Dáyabhága for removing doubts of the learned."—Colebrooke's translation, however, does not contain this verse.

If this text be genuine, then the author appears to have thought that by describing himself as a member of the Pári-Bhadra family, sufficient account is given, namely, that he was a descendant of the celebrated professor Bhadra of Parí-gram, whose descendants were well-known to the learned Bráhmanas of Bengal.

As regards Jímúta's time allowing 25 years for a generation it would be the last quarter of the 2nd century after the migration of the five Bráhmana's into Bengal. And the time of Eru Misra who was the 18th descendant

of Vedagarbha another of the said five Bráhmanas, would be the 2nd quarter of the 5th century from the said time or two hundred and fifty years later than Jímúta's. The time of the migration as found in the Social Histories is 999th year of the Sambat era which corresponds with the 931st year of Christ.

Jímúta was highly respected, and Raghunandana who differs from him in a few particulars, does most respectfully express his dissent in this work which is but an epitome of Jímúta's work.

The translation has been revised, and a few alterations have been made, but they are not material. In this edition the original text is added and placed before the Translation: its presence is of great advantage for testing the accuracy of the rendering. For the convenience of reference it is, like the Translation, divided into Chapters, and so each Chapter is sub-divided into paragraphs, numbered consecutively. This edition is a fac-simile of the first, so that the same passages are to be found in the same pages of both editions.

In conclusion I have to thank Dr. Sarat-chandra Bandyopádhyáya, M. A., D. L., for carefully revising the Index.

20, SANKHARITOLA EAST,
Calcutta, 23rd October, 1904. } G. S.

दायतत्त्वम् ।

महामहोपाध्याय-श्रीरघुनन्दनभट्टाचार्य्य-विरचित-स्मृतितत्त्वापर-
नामाष्टाविंशतितत्त्वान्तर्गतम् ।

श्रीगोलापचन्द्रशास्त्रिणा-संशोधितम् ।

अध्यायक्रमेण दायतत्त्वस्य विषयसूची ।

दायतत्त्वं ।

CHAPTER I.

(1) ओम् ! नमो गणेशाय । प्रणम्य सच्चिदानन्दं वासुदेवं जगत्पतिं। दायभागस्मृतेस्तत्त्वं वक्ति श्रीरघुनन्दनः । (2) निरूप्यन्तेऽत्र संक्षेपाद् दायभागविनिर्णयः । पितृकृतविभागश्च भ्रातृभागक्रियास्तथा । अनधिकारिणोभागेष्वविभाज्यविभाज्यता । विभक्तसंशयच्छेदोविभागोनिह्नुतस्य च । स्त्रीधनं तद्विभागार्हाऽपुत्रधनाधिकारिणः ॥

(3) अथ दायभागः । (4) तत्र नारदः । 'विभागोऽर्थस्य पित्र्यस्य पुत्रैर्यत्र प्रकल्प्यते । दायभाग इति प्रोक्तं तद्विवादपदं बुधैः' । अर्थो धनं । पित्र्यः पितृसम्बन्धागतः । यत्र विवादपदे । (5) दीयते इतिव्युत्पत्त्या दायशब्दः । तत्र ददातिप्रयोगोगौणः । मृतप्रव्रजितादिस्वत्व-निवृत्ति-पूर्व्वक-परस्वत्वोत्पत्ति-फल-साम्यात् । ननु मृतादीनां स्वत्वध्वंसफलको न ममेदमिति संकल्पात्मकस्त्यागस्तन्नास्ति। (6) एवं तत्र च दायपदप्रयोगात् पूर्व्वस्वामिनः स्वत्वापगमोऽवसीयते । तत्रान्येषाञ्च पूर्व्वस्वामिसम्बन्धाधीनं स्वत्वं जायते । 'सत्स्वङ्गजेषु तद्गाम्यर्थो भवति' इति बौधायन-वचनात् । पितृस्वत्वोपरमे पुत्रेषु विद्यमानेषु पुत्रगतं तत्स्वत्वास्पदं धनं भवतीत्यर्थः । (7) यत्तु मिताक्षरायां 'उत्पत्त्यैवार्थे स्वामित्वं लभेत इत्याचार्य्याः' इति गौतम-वचनं । तदपि पितृस्वत्वोपरमेऽङ्गजत्वहेतुत्वेनोत्पत्तिमात्र-सम्बन्धेनान्यसम्बन्धाधिकेन जनकधने पुत्राणां स्वामित्वाद्धनं पुत्रो लभेत नान्यसम्बन्धीत्याचार्य्या मन्यन्ते । (8) न च पितृस्वत्वे विद्य-

मानेऽपि जन्मना तद्धने पुत्त्रस्वत्वमिति वाच्यं। देवलवचनविरोधात्। तद्यथा। 'पितर्य्युपरते पुत्त्राः विभजेयुर्धनं पितुः। अस्वाम्यं हि भवेदेषां निर्दोषे पितरि स्थिते'॥ निर्दोषेऽपतिते। (9) अतएव विभागं प्रक्रम्य नारदः। 'विनष्टे वाप्यशरणे पितर्य्युपरतस्पृहे'। विनष्टे पतिते। अशरणे गृहस्थाश्रमरहिते॥ (10) तेन मरणपातित्य-गार्हस्थ्येतराश्रमगमनैः स्वत्वध्वंसे उपरतस्पृहे सत्यपि स्वत्वे स्वगत-धनेच्छारहिते च पुत्त्राणां विभागाधिकारः। (11) अत्र पतितानामपि स्वधन साध्यप्रायश्चित्तश्रुतेः पातित्येन स्वत्वनाशः प्रायश्चित्तवैमुख्ये बोध्यः। (12) स्वत्वसमानकालीनेच्छाप्रागभावासमानकालीनेच्छाध्वं-सत्वमुपरतस्पृहत्वं। (13) अतोऽपेक्षया स्वत्वे नाशिते पुनरिच्छया न स्वत्वमिति बोध्यं। (14) तस्मात् देवलवचने पितरि विद्यमाने तद्धने पुत्त्राणाम् अस्वाम्यश्रुतेः 'उत्पत्त्यैवार्थे स्वामित्वाल्लभेत इत्याचार्य्याः' इति गौतमवचनं पितृस्वत्वोपरमानन्तरमेव जन्मना पुत्त्रस्वत्वसम्पा-दनात् स्वामित्वेन तद्धने पुत्त्रोलभेतेत्येतत्परं। नतु पितृस्वत्वकाले जन्मानन्तरं। (15) नारदप्रथमवचने पितृपुत्त्रेति सम्बन्धिमात्रोप-लक्षणं। दायभागमुपक्रम्य 'पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा। तत्सुतोगोत्रजोबन्धुः शिष्यः सब्रह्मचारिणः। एषामभावे पूर्व्वस्य धनभागुत्तरोत्तरः। स्वर्य्यातस्य ह्यपुत्त्रस्य सर्व्ववर्णेष्वयं विधिः'॥ इति याज्ञवल्क्योक्तेः। उत्तरोत्तर इति वीप्साश्रुतेः पूर्व्वस्येत्यत्रापि तथा। (16) तेन यत्र द्रव्ये यत्-स्वामिनः पुत्त्रत्वादिसम्बन्धाधीनं तत्स्वत्वोपरमे तत्सम्बन्धिनः स्वत्वं तत्र तं प्रति निरूढोदायशब्दः। (17) पुत्त्रत्वादि-सम्बन्धाधीनं नतु क्रयाद्यधीनं, स्वत्वोपरमे नतु पतिस्वत्वसमकालीन-पत्नीस्वत्वयुक्तेः। (18) तत्र विभागस्तु सम्बन्ध्यन्तरसद्भावेन भूहिरण्यादा-वुत्पन्नस्य एकदेशगतस्वत्वस्य विनिगमनाभावात् विशेषव्यवहारानर्हस्य गुटिकापातादिना अमुकस्येदमिति विशेषेण भजनं स्वत्वज्ञापनमिति

वदन्ति। (19) तन्न समीचीनं। यत्रास्य स्वत्वं तत्रैव गुटिकापातइति कथं वचनाभावान्निश्चेतव्यः। (20)यत्र वा पितुर्निधनानन्तरं तदीयाश्वयोरेकतरमादाय भ्रात्रा यदर्ज्जितं तत्रार्जकस्य द्वावंशावपरस्यैकः सर्व्वसम्मतः तत्र यदि प्राचीनधनविभागे गुटिकापातादर्जकेन स एवाश्वः पश्चाल्लब्धः तदा प्रादेशिकस्वत्ववादिमते प्रागर्ज्जकस्यैव सोऽश्वइति तेनार्ज्जितधने कथं भ्रात्रन्तरस्य भागः। यदि-चार्ज्जकेतरेण सोऽश्वोलब्धः तदा तेनार्जितधनस्य समभागोयुक्तः। एकस्य स्वायांशेन अपरस्य अस्वायांशेन अर्ज्जितत्वात्। (21) वस्तुतस्तु पूर्व्वस्वामिस्वत्वोपरमे सम्बन्धाविशेषात् सम्बन्धिनां सर्व्वधनप्रसूतस्वत्वस्य गुटिकापातादिना प्रादेशिकस्वत्वव्यवस्थापनं विभागः। (22) एवं कृत्स्नधनगतस्वत्वोत्पादविनाशावपि कल्प्येते संसृष्टतायां प्रादेशिकस्वत्वनाशकृत्स्नधनगतस्वत्वोत्पादाविव। (23) एतच्च 'विभक्तोयः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः। पितृव्येणाथवा प्रीत्या सतु संसृष्टउच्यते'॥ इति वृहस्पतिवचने येषामेव हि पितृभ्रातृपितृव्यादीनां पितृपितामहोपार्ज्जितद्रव्येण अविभक्तत्वमुत्पत्तितः सम्भवति तएव विभक्ताः सन्तः परस्परप्रीत्या पूर्व्वकृतविभागध्वंसेन यत् तव धनं तन्मम धनं यन्मम धनं तत्तवापि इत्येकस्मिन् कार्य्ये एकग्टहिरूपतया स्थिताः संसृष्टाः। नत्वनेवं रूपाणां धनसंसर्गमात्रेण सम्भूयकारिणां वणिजामपि संसर्गित्वं, नापि विभक्तानां धनसंसर्गमात्रेण प्रीतिपूर्व्वकाभिसन्धानं विना,इत्यभिदधता दायभागकृतापि स्वइस्तितं। (24) साधारणस्वत्वादेव हि 'बन्धूनामविभक्तानां भोगं नैव प्रदापयेत्'। इति कात्यायनवचनं यथाश्रुतं सङ्गच्छते, द्रव्यमात्रे स्वत्वस्यापि सम्भवात्, अतएवात्र चौर्य्यं न भवतीति वक्ष्यते। (25) एवञ्च 'साक्षित्वं प्रातिभाव्यञ्च दानंग्रहणमेव च। विभक्ताभ्रातरः कुर्य्युर्नाविभक्ताः परस्परं'॥ इति नारदवचनेनाविभक्तपरस्परदानादिनिषेधोऽपि न्यायादेव संगच्छते। दानात् पूर्व्वमपि तद्धने

प्रतिग्रहीतृस्वत्वासम्भवात् दानग्रहणयोरसम्भवः। एवं साक्षित्व-प्रातिभाव्ययोर्ज्ञेयं। (26) स्वत्वाविशेषादेवाविभक्तद्रव्येण यत् कृतं तत्र दृष्टादृष्टे कर्म्मणि सर्व्वेषां फलभागित्वं। तथाच नारदः,—'भ्रातॄणामविभक्तानामेको धर्म्मः प्रवर्त्तते। विभागे सति धर्म्मोऽपि भवेत्तेषां पृथक् पृथक्'॥ (27) व्यासः,—'स्थावरस्य समस्तस्य गोत्रसाधारणस्य च। नैकः कुर्य्यात् क्रयं दानं परस्परमतं विना'॥ अत्र समस्तस्येति विशेषणेन कृत्स्नधनविषयकमेव प्रत्येकस्वत्वं प्रतीयते। (28) तस्मात् तुल्यसम्बन्ध्यन्तरसत्त्वे सम्बन्धिसकाशात् संक्रान्तधनं तस्यापि ममापीति सम्बन्धिना प्रतीयते। तद्विमतौ स्वार्थं दानादिकं प्रतिषिद्धं। (29) अतोऽनेकदेशगतस्वत्वमिति सिद्धं। (30) अंशं विशेषयति बृहस्पतिः। 'पितृरिक्थहराः पुत्राः सर्व्वएव समांशतः - विद्याधर्म्मयुतस्तेषामधिकं लब्धुमर्हति। विद्याविज्ञानशौर्य्यार्थज्ञान-दानक्रियेषु च। यस्येह प्रथिता कीर्त्तिः पितरस्तेन पुत्रिणः'॥ (31) कालभेदेनापि विभागमाह बृहस्पतिः। 'एकां स्त्रीं कारयेत् कर्म्म यथांशेन गृहे गृहे'। (32) अत्र एकस्यापि एकस्यां व्यक्तौ साम-यिकनानास्वत्वविनाशकल्पनं स्फुटमिति। सर्व्वेषां सामयिकनाना-स्वत्वसङ्कोचो वा। (33) देशादिभेदेनापि विभागमाह कल्पतरुरत्ना-करयोः कात्यायनः। 'देशस्य जातेः संघस्य धर्म्मो ग्रामस्य योऽभ्रगुः। उदितः स्यात् स तेनैव दायभागं प्रकल्पयेत्'॥ भृगुराहेति शेषः।

CHAPTER II.

(1) अथ पितृकृतविभागः। हारीतः,—'जीवन्नेव वा प्रविभज्य वनम् आश्रयेत्, वृद्धाश्रमम् वा गच्छेत्, स्वल्पेन वा संविभज्य भूयिष्ठम् आदाय वसेत्, यद्युपदस्येत् पुनस्तेभ्योगृह्णीयात्' इति॥ वृद्धाश्रमः प्रव्रज्या। (2) अनेन स्वल्पस्य विभागो भूयिष्ठद्रव्यग्रहणञ्च पितुरभिहितं। (3) विष्णुः,—'पिता चेत् पुत्रान् विभजेत् तस्य स्वेच्छा स्वयमुपात्तेऽर्थे, पैतामहे तु पितापुत्रयोस्तुल्यं स्वामित्वं' इति॥ (4) स्वार्ज्जितेऽपि स्वेच्छया न्यूनाधिकविभागो भक्तत्वबहुपोष्यत्वाश्च-मत्वादिसत्वासत्वकारणात्, यथा कात्यायनः,—'जीवद्विभागी तु पिता नैकं पुत्रं विशेषयेत्। निर्भाजयेन्नचैवैकम् अकस्मात् कारणं विना'॥ (5) उक्तकारणशून्ये तु नारदः,—'व्याधितः कुपितश्चैव विषयासक्त-चेतनः। अयथाशास्त्रकारी च न विभागे पिता प्रभुः'॥ विषयासक्तत्वं सुभगापुत्रत्वादिना। (6) यत्र तु भ्रातरएव विभागमर्थयन्ते तत्र विषम-भागाभावम् आह मनुः,—'भ्रातॄणाम् अविभक्तानां यद्युत्थानं भवेत् सह। न तत्र भागं विषमं पिता दद्यात् कथञ्चन'॥ (7) पैतामहम् अन्यैर्हृतं पित्रोद्धृतं तदकामतो न विभजनीयं। यथा मनुविष्णू,—'पैतृ-कन्तु पिता द्रव्यम् अनवाप्तं यद् आप्नुयात्। न तत् पुत्रैर्भजेत् सार्द्धम् अकामः स्वयम् अर्ज्जितं'॥ तत् स्वयम् अर्ज्जितमिति कृत्वा न विभजेदित्य न्वयः। (8) अन्योद्धारे तु वक्ष्यमाणशङ्खवचनाद्व्यवस्था, सामान्यविशेष-न्यायात्। (9) एतत्तु स्थावरविषयं। (10) मण्यादावनुद्धृते तु पितुरेव स्वाम्यं (स्वाच्छन्द्यं)। यथा याज्ञवल्क्यः,—'मणिमुक्ताप्रवालानां सर्व्व-स्यैव पिता प्रभुः। स्थावरस्य तु सर्व्वस्य न पिता न पितामहः'॥ पिता-महश्रुतेस्तद्धनविषयमिदं। (11) एवञ्च 'पूर्व्वनष्टाञ्च योभूमिम् एकश्चे-दुद्धरेत्क्रमात्। यथाभागं भजन्त्यन्ये दत्त्वांशन्तु तुरीयकं'॥ इति शङ्ख-

वचनं भ्रात्राद्युद्धृतविषयं। (12) अत्र स्वयं तुरीयांशं गृहीत्वा भ्रात्रादिभिः सहोद्धर्त्ता गृह्णीयात्, अन्यथा विषमद्वष्टं स्यात्। (13) पितुर्भागकरणे त्वपुत्रपत्नीः पुत्रतुल्यांशदानम् आह व्यासः,—'अपुत्राश्च पितुः पत्न्यः समानांशाः प्रकीर्त्तिताः। पितामह्यश्च सर्व्वास्ता मातृतुल्याः प्रकीर्त्तिताः'। (14) एतच्चादत्ते स्त्रीधने। यथा याज्ञवल्क्यः,—'यदि कुर्य्यात् समानंशान् पत्न्यः कार्य्याः समांशिकाः। न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा'॥ (15) एतद्वचनैकवाक्यतया व्यासवचने पितुः पत्न्य इति मान्वयः। (16) नच वैपरीत्यं स्पष्टस्य तु विधेर्नान्यैरुपसंहारइष्यत इति न्यायात्। (17) तेन पुत्रकृतविभागे विमातुर्नांशिता। (18) स्त्रीधने दत्तेत्वर्द्धं पुत्रांशस्य पत्न्या देयं। 'अधिविन्नस्त्रियै देयम् आधिवेदनिकं समं। न दत्तं स्त्रीधनं यस्यै दत्ते-त्वर्द्धं प्रकीर्त्तितं'॥ इति विवाहे याज्ञवल्क्यदर्शनेन, 'बह्वनाम् एकधर्म्माणाम् एकस्यापि यदुच्यते। सर्व्वेषामेव तत् कुर्य्यात् एकरूपा हि ते स्मृताः'॥—इति बौधायनोक्तेन तथा प्रतीतेः। (19) पितामहधनस्य पौत्रैर्विभागे पितामह्यै मातृवद्भागोदेय इति। (20) 'पैतामहे तु पितापुत्रयोस्तुल्यं स्वामित्वं'। इति विष्णूक्तं। 'भूर्या पितामहोपात्ता निबन्धोद्रव्यमेव वा। तत्र स्यात् सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोः'॥ इति याज्ञवल्क्योक्तञ्च। निबन्ध आकरादौ राजादिदत्तं नियतलभ्यमिति कल्पतरूक्तं द्रष्टव्यं। द्रव्यं द्विपदरूपं भूसाहचर्य्यात्। तथाच 'स्थावरं द्विपदञ्चैव यद्यपि स्वयमर्ज्जितं। असम्भूय सुतान् सर्व्वान् न दानं न च विक्रयः'॥ (21) इत्येतेषु निबन्धभूमिद्विपदेषु पितामहोपात्तेषु पितुर्यथा पार्व्वणपिण्डदातृत्वेन तत्पितृधने स्वत्वं तथा तन्मरणादिना तत्स्वत्वोपरमे तत्पुत्राणां पितृयोग्यांशे सत्यपि पितृव्येंऽशिता। (22) अतएव व्यक्तमाह रत्नाकरधृतकात्यायनः। 'अविभक्ते मृते पुत्रे तत्सुतं रिक्थभागिनं। कुर्व्वीत जीवनं येन

लभ्यं नैव पितामहात्। लभेतांशं स पित्र्यञ्च पितृव्यात् तस्य वा सुतात्' ॥ (23) सति तु पितरि पार्व्वणानधिकारात् पुत्राणां नांशिता। (24) एवं धनिनः पौत्रस्वत्वोपरमे तदंशमात्रे प्रपौत्राणाम् अंशिता। सति पौत्रे तु नांशिता इति। (25) यद्वा पुत्रेभ्यः स्वधनविभागदाने स्वाच्छन्द्यात् यथा न्यूनाधिकदानं तथा अत्र नास्तीत्येतत्परं। (26) ननु पितापुत्रयोस्तुल्यांशित्वं। 'द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पिता। समांशहारिणी माता पुत्राणां स्यान्मृते पतौ' ॥ इति नारदवचने पितुर्द्व्यंशित्वात्। (27) नचैतत् स्वार्जितपितृद्रव्यपरं। 'तस्य स्वेच्छा स्वयमुपात्तेऽर्थे' इति विष्णूक्तस्वेच्छाया उद्धारद्रूपद्व्यंशनिर्णयानर्हत्वात्, भूयिष्ठमादाय वसेदित्यनेन विरोधात् (28) किन्तु नारदवचनं द्वावंशाविति पितामहादिधनपरं। (29) 'पितुः प्रसादाद्भुज्यन्ते वस्त्राण्याभरणानि च। स्थावरन्तु न भुज्येत प्रसादे सति पैतृके' ॥ इति मिताक्षराधृतवचनमपि पितामहधनपरं। पित्रा च स्वोपार्ज्जितं स्थावरं दत्तं भुज्येतएवेति, अन्यथा मूलभूतश्रुत्यन्तरकल्पनापत्तेः। (30) निवृत्तरजस्कायामेव मातरि पितामहधनविभागमाह बृहस्पतिः। 'पित्रोरभावे भ्रातॄणां विभागः सम्प्रदर्शितः। मातुर्निवृत्ते रजसि जीवतोरपि शस्यते' ॥ अत्र मातृपदं विमातृपरमपि पुत्रान्तरोत्पत्तिसम्भावनातौल्यात्। (31) मातुर्निवृत्ते रजसीति श्रुतेरेतद्वचनं पितामह-धनपरं नतु पितृधनपरं तत्र विभक्तजस्य भागदर्शनात्। यथाह बृहस्पतिः। 'पित्रा सह विभक्ता ये सापत्ना वा सहोदराः। जघन्यजाश्च ये तेषां पितृभागहरास्तु ते। अनीशः पूर्व्वजः पित्र्ये भ्रातृभागे विभक्तजः। यथा धने तथर्णेऽपि दानाधानक्रयेषु च। परस्परमनीशास्ते मुक्त्वा शौचोदकक्रियाः' ॥ विभक्तजोविभागानन्तरं गर्भाधानेन जातः। (32) याज्ञवल्क्यः। 'विभागञ्चेत् पिता कुर्य्यादिच्छया विभजेत् सुतान्। ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः

समांशिनः' ॥ श्रमेच्छयेति स्वोपात्तविषयं, श्रेष्ठभागेन विंशोद्धारयुक्त-भागेन, श्रेष्ठसमभागी पैतामहधनविषयौ प्रागुक्तवचनसामञ्जस्यात्। (33) एवं 'योर्द्ध' पितुः पुत्रा रिक्थं विभजेयुर्निवृत्ते रजसि मातुर्जीवति चेच्छति' इति गौतमवचनस्य मातृरजसोनिवृत्तेः, पैतामहधनगोचरत्वं। (34) ततश्चोर्द्ध' पितुरिति पितुर्मरणप्रतीतेर्जीवति चेच्छतीत्यत्रापि पितुरेवेच्छा प्रतीयते। तेन पितामहधने पितुरिच्छया विभागो न पुत्रस्येति सिद्धं। (35) एवञ्च 'अस्वाम्यं हि भवेदेषां निर्दोषे पितरि स्थिते',—इति देवलवचनं, पितुरनुमत्या विभागः,—इति बौधायनवचनञ्च पितृधनवत् पैतामहधनपरमप्यविशेषात्। (36) यदि तु अनिवृत्तरजस्कायां मातर्य्यपि दैवात् पितामहधनं विभक्तं। तत्र विष्णुः,—'पितृविभक्ता विभागानन्तरोत्पन्नस्य विभागं दद्युः' इति। नेदं पितृधनपरं। प्रागुक्तहस्पतिवचनविरोधात्। (37) द्वादशविधान् पुत्रान् उद्दिश्य देवलः—'सर्व्वे ह्यनौरसस्यैते पुत्रा दायहराः स्मृताः। औरसे पुनरुत्पन्ने तेषु ज्येष्ठं न विद्यते। तेषां सवर्णा ये पुत्रास्ते तृतीयांशभागिनः। हीनास्तमुपजीवेयुर्ग्रासाच्छादनसंहृताः' ॥ दायहराः पूर्णांशहराः। तेषां औरसव्यतिरिक्तानां मध्ये ये पितुः सवर्णास्ते सत्यौरसे तृतीयांशहराः। (38) अत्रापि विशेषमाह मनुः,—'औरसक्षेत्रजौ पुत्रौ पितृरिक्थस्य भागिनौ। दशापरे च क्रमशो गोत्ररिक्थांशभागिनः' ॥ सन्ततिकारकत्वेन धनिदेयपिण्डदातृत्वेन च प्रथमं पुत्रिकापुत्रस्य, तदनन्तरं दत्तकस्य गोत्ररिक्थयोर्भागित्वं। क्रमशः पूर्व्वपूर्व्वाभावे परः परः इत्थं क्रमेण गोत्रधनयोर्भागिनः। (39) शूद्रस्य दासीपुत्रविभागमाह याज्ञवल्क्यः। 'जातोऽपि दास्यां शूद्रेण कामतोंऽशहरो भवेत्। मृते पितरि कुर्य्युस्तं भ्रातरस्त्वर्द्धभागिनं। अभ्रातृकोहरेत् सर्व्वं दुहितॄणां सुतादृते' ॥ कामतः पितुरिच्छातः। अंशहरः

पुत्रान्तरतुल्यांशहरः। (40) सति तु दौहित्रे तस्यैव स्वीय-सन्तानत्वात् दासीपुत्रस्य अपरिणीताजातत्वात् तयोस्तुल्यांशित्वं युक्तमिति। (41) अनियोगोत्पन्नक्षेत्रजस्य औरसेन सह विभागम् आह मनुः,—'यद्येकरिक्थिनौ स्याताम् औरसक्षेत्रजौ सुतौ। यद्यस्य पैतृकं रिक्थं स तद् गृह्णीत नेतरः'॥ एकऋक्थिनौ एकस्यां जातौ ऋक्थिनौ। यस्य वीजात् यो जातः, स तस्य ऋक्थं गृह्णीयात्। इतरोऽन्यवीजजो न गृह्णीयादित्यर्थः। (42) स्त्रीधने, यत्-पितृदत्तं यद्धनं स्त्रीयै, तद्वीजजस्तद्धनं गृह्णीयात्, नान्यः, इत्याह नारदः,—'द्वौ सुतौ विवदेयातां द्वाभ्यां जातौ स्त्रिया धने। तयोर्यद् यस्य पित्र्यं स्यात् स तद् गृह्णीत नेतरः'॥

CHAPTER III.

(1) अथोपरते पितरि भ्रातॄणां विभागः। तत्र देवलः,—'पितर्य्युपरते पुत्रा विभजेयुर्धनं पितुः'। पितुः सकाशात् आगतधनमित्यर्थः। नारदः,—'यच्छिष्टं पितृदायेभ्योदत्त्वर्णं पैतृकं ततः। भ्रातृभिस्तद्विभक्तव्यम् ऋणी न स्याद् यथा पिता'॥ पितृदायेभ्यः पित्रा दत्तप्रतिश्रुतेभ्यः। ऋणी न स्यादित्यनेन अशक्तौ शोधनीयमित्युत्तमर्णस्थाने स्वीकर्त्तव्यं। (2) अत्र मातरि जीवन्त्यां सोदराणां विभागो न धर्म्मः। यथा शङ्खलिखितौ,—'ऋक्थमूलं हि कुटुम्बम् अस्वतन्त्राः पितृमन्तो-मातर्य्येवमवस्थितायाः' इति॥ अतएव व्यासः,—'भ्रातॄणां जीवतोः पित्रोः सहवासोविधीयते। तदभावे विभक्तानां धर्म्मस्तेषां विवर्द्धते'॥ विभक्तानां स्वस्वार्जितधनेन वैदिककर्म्मकरणात् तस्मात्तद्धर्म्मत्वेन तद्वृद्धिरित्यर्थः।(3) यदि तु विभज्यते,तदा मातुर्भागम्

आह कात्यायनः,—'मातापि पितरि प्रेते पुत्रतुल्यांशहारिणी' ॥ (4) समांशता तु मातुरप्राप्तस्त्रीधनायाः। प्राप्तस्त्रीधनायास्तु भागार्द्ध प्रागुक्तवचनात्। (5) सोद्धारानुद्धाराभ्यां द्विप्रकार-विभागमाह बृहस्पतिः,—'द्विप्रकारोविभागस्तु दायादानां प्रकीर्त्तितः। वयोज्येष्ठ-क्रमेणैकः समाऽपरांशकल्पना' ॥ वयोज्येष्ठक्रमेणेत्युद्धाराभिप्रायेण। (6) शूद्रे तूद्धाराभावोवक्ष्यते। (7) समभागस्य शास्त्रीयत्वेऽप्युद्धार-पक्षो-भक्त्यतिशयाद् अविरुद्धः। विभागाविभागविकल्पवत्। (8) यथा मनुः,—'ज्येष्ठएव तु गृह्णीयात् पित्र्यं धनम् अशेषतः। शेषास्तम् उपजीवेयु-र्यथैव पितरं तथा' ॥ नारदः,—'विभ्रयादिच्छतः सर्व्वान् ज्येष्ठोभ्राता यथा पिता। भ्राता शक्तः कनिष्ठोवा शक्त्यपेक्षा कुले स्थितिः' ॥ मध्यमोऽत्र दण्डापूपन्यायात् सिद्धः। (9) सच न्यायो यथा,—मूषिकस्य दण्डभक्षणं दुष्करं, तन्निष्पत्तौ तत्सहचरितापूपभक्षणम् अतिसुकरत्वात् यथा सम्भाव्यते, तथा अत्रापि सहचरितैकसिद्धाव-परसिद्धेरौचित्यात् तत् सम्भाव्यते। (10) अतएवाविशेषात् नारदः,—'कुटुम्बार्थेषु चोद्युक्तस्तत् कार्य्यं कुरुते तु यः। स भ्रातृभि र्बृंहणीयो ग्रासाच्छादनवाहनैः' ॥ (11) एवम्भूतं प्रशंसति व्यासः,—'जीविते यस्य जीवन्ति विप्रा-मित्राणि बान्धवाः। सफलं जीवितं तस्य आत्मार्थे को न जीवति' ॥ (12) हरिवंशे वैपरीत्याद्-दोषम् आह इन्द्रं प्रति नारदः,—'अन्योन्यभेदो-भ्रातॄणां सुहृदां वा वलान्तक। भवत्यानन्द-कृदेव द्विषतां नात्र संशयः' ॥ (13) अत्र सर्व्वेच्छया नारदेन सह-वास-उक्तः। (14) विभागस्तु न तथा। यथा विभागं प्रक्रम्य कात्यायनः,—'अप्राप्त व्यवहाराणां धनं व्ययविवर्जितं। न्यसे-युर्व्बन्धुमित्रेषु प्रोषितानां तथैव च' ॥ अप्राप्तव्यवहाराणां बालानां। (15) यस्तु स्वयोग्यतया पित्रादिधने निस्पृहः स तण्डुलप्रस्थादि दत्त्वा तत्पुत्रादेर्दुरन्ततानिरासाय विभजनीयः। यथा मनुः,—

'भ्रातॄणां यस्तु नेहेत धनं शक्तः स्वकर्म्मणा। स निर्भाज्यः स्वकादंशात् किञ्चिद् दत्त्वोपजीवनं' ॥ (16) कात्यायनः,—'दृश्यमानं विभज्येत गृहक्षेत्रचतुष्पदं। गूढ़द्रव्यादिशङ्कायां प्रत्ययस्तत्र कीर्त्तितः' ॥ प्रत्ययोदिव्यं। (17) एतदेव स्पष्टयति,—'गृहोपस्कर-वाह्यास्तु दोह्याभरणकर्म्मिणः। दृश्यमाना विभज्यन्ते कोषं गूढ़ेऽब्रवोद्भृगुः' ॥ गृहोपस्करः उदूखलादि, कर्म्मिणो दासादयः, कोषो दिव्यविशेषः। स तु दिव्यतत्त्वेऽनुसन्धेयः। प्रसिद्धम् अन्यत्। (18) नारदः,—'येषान्तु न कृताः पित्रा संस्कारविधयः क्रमात्। कर्त्तव्या भ्रातृभिस्तेषां पैतृकादेव तद्धनात्। अविद्यमाने पित्रर्थे स्वांशाद् उद्धृत्य वा पुनः। अवश्य-कार्य्याः संस्काराः भ्रातृभिः पूर्व्वसंस्कृतैः ॥ (19) कन्याभ्यस्तु विवाहोचितद्रव्यदानमाह देवलः,—'कन्याभ्यश्च पितृद्रव्याद्-देयं वैवाहिकं वसु। अपुत्रकस्य कन्या स्वा धर्म्मजा पुत्रवद्-धरेत्' ॥ विष्णुः,—'अनूढ़ानान्तु कन्यानां स्ववित्तानुसारेण संस्कारं कुर्य्यात्'॥(20)एवं तुरीयांशदानप्रतिपादकमपि विवाहोचित-द्रव्यदानपरं। (21) पितृ-व्यतिरिक्तानामपि संस्कर्त्तृत्वमाह द्वैतनिर्णयामृतधृतस्मृतिः,—'अष्टौ संस्कारकर्म्माणि गर्भाधानमिव स्वयं। पिता कुर्य्यात् तदन्योवा तस्याभावे तु तत्क्रमात् ॥

CHAPTER IV.

(1) अथ विभागानधिकारिणः। आपस्तम्बः,—'सर्व्वे हि धर्म्म-युक्ता भागिनोद्रव्यमर्हन्ति। यस्त्वधर्म्मेण द्रव्याणि प्रतिपादयति ज्येष्ठोऽपि तम् अभागं कुर्व्वीत' इति ॥ ज्येष्ठोऽपि पुत्त्र इति शेषः। (2) तथाच बृहस्पतिः,—'सवर्णाजोप्यऽगुणवान् नार्हः स्यात् पैतृके

धने। तत्पिण्डदाः श्रोत्रिया ये तेषाम्-तद्-अभिधीयते'॥ तत्पिण्डदाः धनिपिण्डदाः, अतएव श्रोत्रिया इत्युक्तं, अगुणवान् गुणविरुद्ध-दोषवान्, अगुणवद्ग्रासाच्छादनदातारइति रत्नाकरः, एतन्मतेऽपि सुतरां धनिपिण्डदातृत्वं प्रतीयते। (3) 'यथा जलं कुप्लवेन तरन् मज्जति मानव। तथा पिता कुपुत्त्रेण तमस्यन्धे निमज्जति'॥ (4) कात्यायनः,—'यज्ञार्थं द्रव्यम् उत्पन्नं तस्मात् द्रव्यं नियोजयेत्। स्थानेषु द्रव्ययोगेषु न स्त्रीमूर्खविधर्म्मिषु'॥ (5) स्त्री इति पत्न्यादि-विशेषविहितेतरसपिण्डस्त्रीपरं। (6) तथा,—'शास्त्रशौर्य्यादिरहित-स्तपोदानविवर्ज्जितः। आचारहीनः पुत्त्रस्तु मूत्रोच्चारसमस्तु सः'॥ (7) शङ्खः,—'अकृत्वा प्रेतकार्य्याणि प्रेतस्य धनहारकः। वर्णानां यद्वधे प्रोक्तं तद्व्रतं नियतश्चरेत्'॥ (8) देवलः,—'मृते पितरि न क्लीव-कुष्ठ्युन्मत्तजड़ान्धकाः। पतितः पतितापत्यं लिङ्गी दायांशभागिनः। तेषां पतितवर्ज्जेभ्यो भक्तवस्त्रं प्रदीयते। तत्सुताः पितृदायांशं लभेरन् दोषवर्जिताः'॥ जड़ो धर्म्मज्ञत्वे निरुत्साहः, अन्धोजन्मान्धः, 'जन्मान्धबधिरौ तथा' इति मनुवचनात्, लिङ्गी कपटव्रतधारी। (9) नारदः,—'पितृद्विट् पतितः षण्डो यश्च स्यादौपपातिकः। औरसा अपि नैतेंऽशं लभेरन् क्षेत्रजाः कुतः'॥ पितृद्विट् पितरि जीवति तत्ताड़नादिकृत्, मृते तु तत्श्राद्धादिविमुखः। औपपातिकः उपपातकैः संसृष्टः, कल्पतरुकृता तु औपपातिक इत्यत्र अपपात्रितः इति पठित्वा राजवधादि-दोषेण बान्धवैर्यस्य घटापवर्ज्जनं कृतम् इति विवृतं। प्रकाशकारेण उपपातकी इति पठित्वा उपपातकैर्युक्तः इति विवृतं।

CHAPTER V.

(1) अथ विभाज्याविभाज्ये। तत्र व्यासः,—'अनाश्रित्य पितृद्रव्यं स्वशक्त्याप्नोति यद् धनं। दायादेभ्यो न तद् दद्यात् विद्यालब्धञ्च यद् भवेत्'॥ (2) विद्याधनम् आह कात्यायनः,—'उपन्यस्ते तु यल्लब्धं विद्यया पणपूर्व्वकं। विद्याधनन्तु तद् विद्यात् विभागे न नियोजयेत्। शिष्याद्-आर्त्विज्यतः प्रश्नात् सन्दिग्धप्रश्ननिर्णयात्। स्वज्ञानशंसनात् वादात् लब्धं प्राध्ययनात्तु यत्। विद्याधनन्तु तत् प्राहुर्विभागे न नियोजयेत्। शिल्पेष्वपि हि धर्म्मोऽयं मूल्याद् यच्चाधिकं भवेत्। परं निरस्य यल्लब्धं विद्यया द्यूतपूर्व्वकं। विद्याधनन्तु तद्विद्यात् न विभाज्यं बृहस्पतिः'॥ (3) यदि भवान् अद्य्म् उपन्यस्यति तदा भवते मया एतत् देयमिति पणितं, तत्रोपन्यासं निस्तीर्य्य यल्-लभते तत्र विभाज्यं। शिष्यात् अध्यापितात्, आर्त्विज्यतः याजितात् यजमानात् दक्षिणया लब्धधनं, दक्षिणाधनञ्च न प्रतिग्रहलब्धं वेतनरूपत्वात् तस्य। तथा यत्किञ्चित् विद्याप्रश्ने निस्तीर्णेऽपणितं यदि कश्चित् परितोषात् ददाति। तथा योहि अस्मिन् शास्त्रार्थे अस्माकं संशयम् अपनयति तस्मै धनमिदं ददानि इति उपस्थितस्य संशयम् अपनीय यल्लब्धं, वादिनोर्वा सन्देहे न्यायकरणार्थम् आगतयोः सम्यक् निरूपणेन यल्लब्धं षष्ठांशादिकं। तथा शास्त्रादिषु प्रकृष्टज्ञानं सम्भाव्य यत् प्रतिग्रहादिना लब्धं। तथा शास्त्रज्ञानविवादे, अन्यत्रापि यत्र कुत्रचित् अन्योन्य-ज्ञानविवादे, निर्जित्य यल्लब्धं। तथा एकस्मिन् देये बहूनामुपप्लवे, येन प्रकृष्टमधीत्य यल्लब्धं। तथा शिल्पादिविद्यया चित्रकरसुवर्णकारादिभिर्यल्लब्धं। तथा द्यूतेनापि परं निर्जित्य यल्लब्धं। तत् सर्व्वम् अविभाज्यम् इतरैः। तस्मात् यया कयाचित् विद्यया लब्धम्, अर्जकस्यैव तत्, न इतरेषाम्, इति प्रदर्शनार्थन्तु कात्यायनेन विस्तारितम्, इति

दायभागः। (4) नारदः,—'कुटुम्बं बिभृयाद्-भ्रातुर्यो विद्यामधि-
गच्छतः। भागं विद्याधनात् तस्मात् स लभेताश्रुतोऽपि सन्' ॥
बिभृयाद् इत्येकवचननिर्देशात्, यदि विद्याम् अभ्यस्यतो भ्रातुः
कुटुम्बम् अपरोभ्राता स्वधनव्ययशरीरायासाभ्यां सम्वर्द्धयति, तदा
तद्विद्यार्ज्जितधने तस्याधिकारः। अश्रुतोमूर्खः। (5) कल्पतरु-
मिताक्षरादीपकलिकासु कात्यायनः,—'परभक्तोपयोगेन विद्या
प्राप्ताऽन्यतस्तु या। तया लब्धं धनं यत्तु विद्यालब्धं तदुच्यते' ॥
अन्यतः पितृमातृकुलव्यतिरिक्तात्। (6) अत्र विशेषयति सएव,—
'नाविद्यानान्तु वैद्येन देयं विद्याधनात् क्वचित्। समविद्याधिका-
नान्तु देयं वैद्येन तद्धनं' ॥ तन्मोच्चरितविद्यापदम् उभाभ्यां सम्बध्यते,
तेन समविद्याधिकविद्यानां भागः, नतु न्यूनविद्याऽविद्ययोः ॥ वैद्येन
विदुषा। (7) पुनर्विशेषयति,—'कुले विनीतविद्यानां भ्रातॄणां पितृ-
तोऽपि वा। शौर्य्यप्राप्तन्तु यद्वित्तं विभाज्यं तत् बृहस्पतिः' ॥ कुले
स्वकुले पितामहपितृव्यादिभ्यः पितृतएव वा शिक्षितविद्यानां भ्रातॄणां
यत् विद्याशौर्य्यप्राप्तं धनं तत् विभजनीयमिति कल्पतरुरत्नाकरौ। (8)
पुनः कात्यायनः,—'द्व्यंशहरोऽर्द्धहरोवा पुत्रवित्तार्ज्जनात् पिता'।
पुत्रवित्तार्ज्जनात्—कृदभिहितभावो द्रव्यवत् प्रकाशते इति न्यायात्
—पुत्रार्ज्जितवित्तात्। (9) पितुर्द्व्यंशित्वं पितृधनानुपघातविषयं भ्रातृ-
धनोपघातविषयञ्च। अर्ज्जकस्य तु द्व्यंशित्वं। भ्रातृधनोपघाते तु
तेषामप्येकैकांशित्वं वक्ष्यमाणव्यासवचनात्। पितुरर्द्धहरत्वन्तु पितृ-
द्रव्योपघातात् गुणवत्त्वाद्वा इति दायभागः। अनुपघाते पिता द्व्यंश-
हरः, अर्ज्जकत्वात् स्वयमपि द्व्यंशहरः, इतरेषाम् अनंशित्वं। भ्रातृ-
द्रव्योपघाते तु तस्याप्येकांशः। इति द्व्यंशार्द्धांशयोर्भेदकथनं। (10)
पुनः कात्यायनः,—'गोप्रचारश्च रथ्या च वस्त्रं यच्चाङ्गयोजितं।
प्रायोज्यं न विभज्येत शिल्पार्थञ्च बृहस्पतिः' ॥ प्रायोज्यं यत् यस्य प्रयो-

अनार्हं पुस्तकादि, न तत् मूर्खादिभिः सह पण्डितादिभिर्विभजनीयं, एवमेव दायभागमदनपारिजातादयः। (11) याज्ञवल्क्यः,—'पितृभ्याञ्चैव यद्-दत्तं तत् तस्यैव धनं भवेत्'॥ पुत्रदुहित्रोर्यदलङ्कारादि दत्तं, तत्तस्यैवेति शूलपाणिमहामहोपाध्यायाः। (12) नारदः,—'शौर्य्य-भार्य्या-धने चोभे यच्च विद्याधनम् भवेत्। त्रीण्येतान्यविभाज्यानि प्रसादोयश्च पैतृकः'॥ प्राप्तञ्च सह भार्य्ययेति भरद्वाजवचनात् भार्य्याप्राप्तिकाले लब्धं धनं भार्य्याधनम् औद्वाहिकमित्यर्थः। चोभे इत्यत्र हित्वेति पाठे एतत्त्रिकं हित्वा अन्यद्विभजेदित्यनुवर्त्तते, अत-एतान्यविभाज्यानीति। (13) प्रसाददत्तस्य पौर्व्वापर्य्ये पूर्व्वसंप्रदानस्यैव तद्द्रव्यं,—'सर्व्वेष्वेव विवादेषु बलवत्युत्तरा क्रिया। आधौ प्रतिग्रहे क्रीते पूर्व्वा तु बलवत्तरा'॥ इति याज्ञवल्क्यवचनात्। अत्र या बलवती सैव सिध्यतीत्यर्थः। (14) तत्राप्याधिक्रिया स्वामिनो यथेष्टविनियोग-विरोधिका, नतु स्वत्वध्वंसजनिका, इति सा पूर्व्वा परा वा, प्रतिग्रह-क्रयक्रियाभ्यां पूर्व्वस्वामिस्वत्वध्वंसोत्तरजाताभ्यां बलवतीभ्यां बाध्यते। (15) अतएव रत्नाकरादिधृतस्मृतिः,—'न्यासं कृत्वा परत्राधिं कृत्वा वाधिं करोति यः। विक्रयस्या क्रिया तत्र पश्चिमा बलवत्तरा'॥ न्यासं कृत्वा आधिं करोति, आधिं कृत्वा वा विक्रयं करोति, विक्रयपदं स्वत्वध्वंसकत्वात् दानं लक्षयति, तत्र परा क्रिया सिद्धेत्यर्थः॥ (16) एवञ्च विक्रेतृदातोर्मरणादिना आध्युद्धारे विक्रयदानाभ्यां तत्कर्त्तृतुल्यस्वत्वजननात् तत्क्रेतृप्रतिग्रहीतृभ्या-माध्युद्धारः कार्य्य इति। तत्रैवागमविवादे ताभ्यान्तयोर्भोगएव व्यव-स्थापनीयो नागमादिरिति। (17) शङ्खलिखितौ,—'न वास्तुविभागो-नोदकपात्रालङ्कारोपयुक्तस्त्रीवाससाम् अपांप्रचाररथ्यानां विभागश्च-इति प्रजापतिरिति'॥ यस्मिन् वास्तुनि येन गृहोद्यानादिकं कृतम्, अपरेणापि स्थानान्तरे तथाकृतञ्चेत्, तदा येन यत् कृतं, तत्

तस्यैव। अन्यथाप्येवं। (18)साधारणधनार्जितेऽपि विशेषमाह व्यासः,—'साधारणं समाश्रित्य यत् किञ्चित् वाहनायुधं। शौर्य्यादिनाप्नोति धनं भ्रातरस्तत्र भागिनः। तस्य भागद्वयं देयं शेषास्तु समभागिनः'॥ अत्र भ्रातर इत्युपलक्षणं पितृव्यादयोपि बोद्धव्याः। तस्य अंशकस्य, साधारणोपघाते यस्य यावतोऽंशस्य अल्पस्य महतो-वा उपघातः, तस्य तदनुसारेण भागकल्पना कार्य्येति दायभागः। (19) अथ,—स्थावरस्य समस्तस्य गोत्रसाधारणस्य च। नैकः कुर्य्यात् क्रयं दानं परस्परमतं विना। विभक्ता अविभक्ता वा सपिण्डाः स्थावरे समाः। एकोह्यनीशः सर्व्वत्र दानाधमनविक्रये'॥ इति व्यासवचनात्स्वामिकस्य दानबन्धकविक्रयानधिकारइति वाच्यं। (20) यथेष्टविनियोगार्हत्वरूपस्य स्वत्वस्य द्रव्यान्तरइव अत्राप्यविशेषात्। (21) व्यास वचनञ्च स्वामित्वेन दुर्व्वृत्तपुत्रगोचरविक्रयादिना कुटुम्ब-विरोधात् अधर्म्मज्ञापनार्थनिषेधरूपं, नतु विक्रयाद्यनिष्पत्त्यर्थम्, इति दायभागः। (22) विभक्तानामपि यत्रांशविच्छेदो न जातस्तत्राप्यगत-ववावतिष्ठते, तेन तत्र साधारणत्वमेव, तत्रैकोऽनीशः, पृथग्भूतेषु स्वतन्त्रजातस्य सिद्धिरेव, इति विवादचिन्तामणिः। वस्तुतस्तु विभक्ते-ष्वनुज्ञाग्रहणं विभक्ताविभक्तसीमादिसंशयव्युदासाय ग्रामसामन्ताद्यनु-मतिग्रहणवत्। (23) अतो विभक्तानुमतिं विना व्यवहारः सिध्यत्येव। (24) तदुक्तं मिताक्षरायां,—'स्वग्रामज्ञातिसामन्तदायादानुमतेन च। हिरण्योदकदानेन षड्भिर्गच्छति मेदिनी'॥ इति दायादा-दौहित्रादयः ज्ञातेः पृथगुपादानात्। (25) हिरण्योदकदानेनेति। 'स्थावरे विक्रयोनास्ति कुर्य्यादाधिमनुज्ञया'। इति देवलवचनेन स्थावरस्य केवलविक्रयप्रतिषेधात्, एवं—'भूमिं यः प्रतिगृह्णाति यश्च भूमिं प्रयच्छति। तावुभौ पुण्यकर्म्माणौ नियतं स्वर्गगामिनौ'॥ इति दानप्रशंसादर्शनाच्च, विक्रयेऽपि कर्त्तव्ये, सहिरण्यमुदकं दत्त्वा, दान-

वन्नैव स्थावर विक्रयः, इति विज्ञानेश्वरः। (26) वस्तुतस्तु स्थावरविक्रय-
निषेधः अविभक्तस्थावरविषयः। तत्रापि यदि विक्रयं विना अवस्थितिर्न
भवति, तदा विक्रये कर्त्तव्ये दायादानां दुरन्ततानिहत्यर्थं क्रेतुरिच्छया
दानमप्युक्तं। (27) अतएव हारीतेन,—'यत्नोपकारिणे ददाति,' इति
यत् दानोपसर्गत्वमुक्तं, तत् व्यसनोपकारिपरं। तदितरोपकारिणे दाने
फलमाह दक्षः,—'मातापित्रोर्गुरौ मित्रे विनीते चोपकारिणे।
दीनानाथविशिष्टेभ्यो दत्तन्तु सफलं भवेत्'॥ (28) अतएव नारदः,—
'स्वभागान् यदि ते दद्युर्व्विक्रीणीयुरथापि वा। कुर्य्युर्यथेष्टं तत्
सर्व्वम् ईशास्ते स्वधनस्य वै'॥ (29) अतएव याज्ञवल्क्यः,—'क्रमा-
दभ्यागतं द्रव्यं हृतम् अभ्युद्धरेत्तु यः। दायादेभ्यो न तद्दद्यात् विद्यया
लब्धमेव च'॥ पितृपितामहागतं बलादन्यैर्हृतं योऽंशान्तराणाम्
अनुज्ञया उद्धरति, तत् अंशान्तरेभ्यो न दद्यात्। (30) भूमौ तु
विशेषयति शङ्खः,—'पूर्व्वनष्टाञ्च योभूमिम् एक एवोद्धरेत्क्रमात्।
यथाभागं भजन्त्यन्ये दत्त्वांशन्तु तुरीयकं'॥ एतद्वचनं स्मृति-
महार्णवकामधेनुपारिजातप्रभृतिष्वलिखनात् अयुक्तमेवेति रत्नाकरः।
तन्न, दायभागमिताक्षराप्रभृतिधृतत्वात्। (31) पूर्व्वपुरुषार्जितमष्टोद्धारे
विशेषयति मिताक्षरायां,—'स्थावरं द्विपदञ्चैव यद्यपि स्वयमर्जितं।
असम्भूय सुतान् सर्व्वान् न दानं नच विक्रयः। ये जाता येऽप्यजाता
वा ये च गर्भे व्यवस्थिताः। वृत्तिन्तेऽपि हि काङ्क्षन्ति वृत्तिलोपो
विगर्हितः'॥ (32) अस्यापवादमाह,—'एकोपि स्थावरे कुर्य्याद्
दानाधमनविक्रयं। आपत्काले कुटुम्बार्थे धर्म्मार्थे च विशेषतः'॥
आधमनं बन्धकत्वेन स्थापनं। (33) कुटुम्बार्थे दासकृतस्यापि सिद्धिमाह
मनुः,—'कुटुम्बार्थेऽध्यधीनोऽपि व्यवहारं यम् आचरेत्। स्वदेशे वा
विदेशे वा तं ज्यायान् न विचालयेत्'॥ तद्देशस्थे देशान्तरस्थे वा
स्वामिनि कुटुम्बव्यवहारनिमित्तकं दासोऽपि यत् ऋणादिकं कुर्य्यात्

तत् स्वाम्यनुमन्येतेति कुल्लूकभट्टः। (34) व्यक्तमाह बृहस्पतिः,—'पितृव्यभ्रातृपुत्रस्त्रीदासशिष्यानुजीविभिः। यद्‌गृहीतं कुटुम्बार्थे तद्‌गृही दातुमर्हति'॥ (35) मनुः,—'ग्रहीता यदि नष्टः स्यात् कुटुम्बार्थे कृतव्ययः। दातव्यं बान्धवैस्तत् स्यात् प्रविभक्तैरपि स्वतः'॥ स्वतः स्वधनात्। (36) कात्यायनः,—'कुटुम्बार्थमशक्ते तु गृहीतं व्याधितेऽथवा। उपप्लवनिमित्तन्तु विद्यादापत्कृतन्तु तत्। कन्यावैवाहिकञ्चैव प्रेतकार्य्ये च यत् कृतं। एतत् सर्व्वं प्रदातव्यं कुटुम्बेन कृतं प्रभोः'॥ कुटुम्बम् अवश्यं भरणीयं। प्रभोरिति कर्त्तरि षष्ठी, तेन प्रभुना दातव्यमिति रत्नाकरः। (37) दायभागे हारीतः,—'जीवति पितरि पुत्राणाम् अर्थादानविसर्गाक्षेपेषु न स्वातन्त्र्यं, कामं दीने प्रोषिते आर्त्तिं गते वा ज्येष्ठोऽर्थांश्चिन्तयेत्'॥ शुद्धमाहतुः शङ्खलिखितौ,—'पितर्य्यशक्ते कुटुम्बव्यवहारान् ज्येष्ठः प्रतिकुर्य्यात्, अनन्तरोवा कार्य्यज्ञस्तदनुमतः, नत्वकामे पितरि ऋक्थविभागः, वृद्धे विपरीतचेतसि दीर्घरोगिणि वा ज्येष्ठएव पितृवदर्थान् पालयेत् इतरेषाम्, ऋक्थमूलं हि कुटुम्बम्, अस्वतन्त्राः पितृमन्तो-मातुरप्येवमवस्थितायाः'॥ एतद्वचनद्वयं कार्य्याक्षमे दीर्घरोगिणि च पितरि विभागं निषिध्यैव ज्येष्ठो गृहं चिन्तयेत् तदनुजोवा कार्य्यज्ञ-इत्याह। (38) अनुमतिश्चाप्रतिषेधादपि भवति। 'स्वं द्रव्यं दीयमानञ्च यः स्वामी न निवारयेत्। ऋक्थिभिर्वा परैर्वापि दत्तं तेनैव तद्भृगुः'॥ इति प्रायश्चित्तविवेकधृतकात्यायनवचनात्। (89) अतएव, परमतम् अप्रतिसिद्धम् अनुमतं भवति इति न्यायविदः। (40) एवं दत्तानिवारणात् सिद्धिरिति।

CHAPTER VI.

(1) अथ वृत्तविभागसन्देहनिर्णयः। मनुः,—'गोत्रभागविभागार्थे सन्देहे समुपस्थिते। गोत्रजैस्तापरिज्ञाते कुलं साक्षित्वमर्हति'॥ गोत्रभागविभागार्थे सन्देहे इति गोत्रलब्ध-विभजनीय-विभजन-विषयके वृत्तविभागवैपरीत्यसन्देहे विभागकरणसन्देहे च कुलं बन्धुः, एषामभावएव अन्यः, साक्षी। (2) तत्रेत्थमाह बृहस्पतिः,—'भ्रातरः संविभक्ता ये स्वरुच्या तु परस्परं। विभागपत्रं कुर्व्वन्ति भागलेख्यं तदुच्यते'॥ (3) व्यवहारमातृकायां बृहस्पतिः,—'यथोक्ता-श्रासने ग्रामक्षेत्रारामाश्च लेखिताः। एकदेशोपभोगेऽपि सर्व्वे भुक्ता भवन्ति ते'॥ श्रासनं पत्रादि। (4) एकदेशस्याप्यनुपभोगे तु सर्व्वस्य क्रीतादेर्हानिरित्याह सएव,—'संविभागक्रयप्राप्तं पित्र्यं लब्धञ्च राजतः। स्थावरं सिद्धिम् आप्नोति भुक्त्या, हानिम् उपेक्षया'। ग्राममात्रं येन भुक्तं स्वीकृत्यापरिपन्थितं। तस्य तत् सिद्धिमाप्नोति हानिस्तोपेक्षया तथा'॥ सम्विभागक्रयादिलब्धस्यैव सति भोगे सिद्धिः तद्भोगोपेक्षया हानिरिति। (5) नारदः,—'दानग्रहण-पश्वन्नगृहक्षेत्रपरिग्रहाः। विभक्तानां पृथक् ज्ञेयाः पाकधर्म्मा-गमव्ययाः। साक्षित्वं प्रातिभाव्यञ्च दानं ग्रहणमेव च। विभक्ता-भ्रातरः कुर्य्युर्नाविभक्ताः परस्परं। येषामेताः क्रिया-लोके प्रवर्त्तन्ते स्वरिक्थतः। विभक्तान् अवगच्छेयुर्लेख्यमप्यन्तरेण तान्'॥ (6) अतएव याज्ञवल्क्यः,—'भ्रातॄणामथ दम्पत्योः पितुः पुत्रस्य चैव हि। प्रातिभाव्यम् ऋणं साक्ष्यम् अविभक्ते न तत् स्मृतं॥ परस्पर-मिति शेषः। (7) यद्यपि,—'जायापत्योर्विभागो न विद्यते, तथा पुण्या-पुण्यफलेषु च'। इत्यापस्तम्बोक्तो-विभागाभावः, पत्न्यधिकारे पत्न्या अपि जीवत्पतिधनमात्रे स्वत्वम् उक्तञ्च। 'दम्पत्योर्मध्यगं धनम्,'

इति श्राद्धविवेकः। मध्यगम् उभयस्वामिकमित्यर्थः। तथापि,—'यदि कुर्य्यात् समानांशान् पत्न्यः कार्य्याः समांशिकाः'। इति याज्ञवल्क्येन पुत्रविभागकरणे प्रवृत्तस्याऽपुत्रपत्न्या अपि विभागावगतेस्तदभिप्रायेण दम्पत्योरित्युक्तं। (8) यत्तु,—'भार्य्या पुत्रश्च दासश्च त्रयएवाधनाः स्मृताः'। इत्यत्राधनत्वश्रुतेरापस्तम्बीयाविभागाभिधानं वैदिककर्म्म-मात्रे सहकारित्वेनाधिकारार्थमिति। (9) तत्र, तद्वचनोत्तरार्द्धे,—'यत्ते समधिगच्छन्ति यस्यैते तस्य तद्धनं'। इत्यनेन स्वार्जितस्यैव पत्न्यादीनां पत्याद्यनुमतिमन्तरेणास्वातन्त्र्यप्रतिपादनात्। आपस्तम्ब-वचने 'तथा पुण्यापुण्यफलेषु च' इति पृथगुपादानाच्च। (10) तस्मात्, विभागोन विद्यत इति निषेधस्य प्रवृत्तिपूर्व्वकत्वात्, एकस्मिन् धने उभयोः स्वत्वं प्राप्यते। (11) अन्यथा उभयोः स्वत्वाभावेन विभाग-प्रसक्त्यनुपपत्तेर्निषेधर्व्वैयर्थं स्यात्। (12) 'एकत्वं सा गता यस्माच्चरु-मन्त्राहुतिव्रतैः'। इति लघुहारीतोक्तैकत्वस्यैतदपि फलं।

CHAPTER VII.

(1) अथ चिरप्रोषितागतस्य वंशस्य विभागः। तत्र बृहस्पतिः,—'गोत्रसाधारणं त्यक्त्वा योऽन्यदेशं समाश्रितः। तद्वंश-स्यागतस्यांशः प्रदातव्यो न संशयः। तृतीयः पञ्चमश्चैव सप्तमो-वापि यो भवेत्। जन्मनामपरिज्ञाने लभेतांशं क्रमागतं। यं परम्परया मौलाः सामन्ताः स्वामिनं विदुः। तदन्वयस्यागतस्य दातव्या गोत्रजैर्मही। भुक्तिस्त्रैपुरुषी सिध्येदपरेषां न संशयः। अनिवृत्ते सपिण्डत्वे सकुल्यानां न सिध्यति। अस्वामिना तु यद्भुक्तं

गृहक्षेत्रापणादिकं। सुहृद्बन्धुसकुल्यानां न तद्भोगेन हीयते। विवाह्यश्रोत्रियैर्भुक्तं राज्ञामात्यैस्तथैव च। सुदीर्घेणापि कालेन तेषां सिध्यति तत्तु न' ॥ गोत्रसाधारणं द्रव्यमिति शेषः। अपरेषां गोत्रजादितरेषां। आपणः पण्यवीथिका। विवाह्योजामाता इति व्यवहारचिन्तामणिः। (2) नारदः,—'अनागमन्तु यद्भुक्तं पित्रा पूर्व्वतरैस्त्रिभिः। न तच्छक्यम् अपाकर्त्तुं क्रमात् त्रिपुरुषागतं' ॥ पित्रा पूर्व्वतरैरित्यत्र पित्रा सह पितरमादाय त्रिभिः, 'चतुर्थः सम-वाप्नुयात्' इति वचनात्। (3) भोगं विशिनष्टि व्यासः,—'पिता पितामहोयस्य जीवेच्च प्रपितामहः। त्रयाणां जीवतां भोगो-विज्ञेयस्त्वेकपूरुषः' ॥ युगपद्भोगी षष्टिवर्षेऽपि न त्रैपुरुषिकः, प्रपिता-महस्य तत्र स्वातन्त्र्यात् तस्यैव भोगः, तदा कोनामासावित्याह 'विज्ञेयस्त्वेकपूरुषः', इति। (4) त्रिपुरुषं विशेषयति व्यासः,—'प्रपितामहेन यद्भुक्तं तत्-पुत्रेण विना च तं। तौ विना यस्य पित्रा च तस्य भोगस्त्रिपौरुषः' ॥ (5) नियन्तं कालम् एकैकस्य भोग-स्यापेक्षायां व्यासः,—'वर्षाणि विंशतिं भुक्ता स्वामिनाऽव्याहता सती। भुक्तिः सा पौरुषी भूमेर्द्विगुणा च द्विपौरुषी। त्रिपौरुषी च त्रिगुणा न तत्राऽन्वेष्यआगमः' ॥ अव्याहतेति प्रतिवादिसमक्षं लक्ष्यते, षष्टिवर्षभोगस्याप्यनेनैकवाक्यत्वं। अतःपरम् उपेक्षया स्वत्व-नाशः। (6) वृहस्पतिरपि,—'आहर्त्ता शोधयेत् भुक्तिम् आगमञ्चापि संसदि। तत्सुतो-भुक्तिमेवैकां पौत्रादिषु न किञ्चन' ॥ (7) याज्ञवल्क्यः,—'आगमस्तु कृतो येन सोऽभियुक्तस्तमुद्धरेत्। न तत्-सुतस्तत्सुतोवा भुक्तिस्तत्र गरीयसी' ॥ (8) भुक्तिशोधनमाह कात्यायनः,—'आगमोदीर्घकालश्च निश्छिद्रोऽन्यरवोज्झितः। प्रत्यर्थि-सन्निधानञ्च पञ्चाङ्गो-भोग इष्यते' ॥

CHAPTER VIII,

(1) अथ विभागकाले निह्नुतस्य पश्चादवगतस्य विभागः। तत्र कात्यायनः,—'प्रच्छादितन्तु यत् येन पुनरागत्य तत् समं। भजेरन् भ्रातृभिः सार्द्धम् अभावे तु पितुः सुताः। अन्योन्यापहृतं द्रव्यं दुर्व्विभक्तञ्च यद्भवेत्। पश्चात् प्राप्तं विभज्येत समभागेन तद्भृगुः' ॥ पश्चात्प्राप्तमित्युपादानात् विभक्ते सति लौकिकप्रमाणेन यस्य कस्यचिन्निह्नुतस्य प्रदर्शनं विनापि न पुनर्व्विभागः, न वा तत्र दिव्यं, अन्यथा शङ्खापिशाच्या दिव्यं विना कस्यचिदप्यनिश्चितद्रव्यत्वेन सम्यग्विभागेन स्यात्। दुर्व्विभक्तमिति असम्यग्विभागस्य पुनर्व्विभागं दर्शयति। (2) 'सकृदंशो निपतति सकृत् कन्या प्रदीयते। सकृदाह ददानीति त्रीण्येतानि सतां सकृत्' ॥ इति मनु-नारद-कात्यायन-बृहस्पति-वचनं सम्यग्विभागविषयं। (3) 'येनांशोयादृशोभुक्तस्तस्य तन्न विचालयेत्। स्वेच्छाकृतविभागो यः पुनरेव विसम्वदेत्। स राज्ञांऽशे स्वके स्थाप्यः शासनीयोऽनुबन्धकृत्' ॥ इति रत्नाकरधृतबृहस्पतिवचनमपि स्वेच्छाकृतपदोपादानं स्वारसिकन्यूनाधिकपरं, नतु भ्रान्त्यादिकृतदुर्व्विभागपरं। (4) पश्चात् प्राप्तमित्यनेन तन्मात्रस्यैव विभागः, न पूर्व्वविभक्तं विभजनीयमित्यवगम्यते। (5) समभागेनेति अपहर्त्तुरपहर्त्तृतया भागोन देयः, अल्पोवा देयः, इति निरासार्थं। (6) भृगुराहेति शेषः वाक्यार्थकर्म्मता च। (7) अविभक्तत्वादेव विभागे प्राप्ते वचनारम्भश्चौर्य्यदोषाभावं ज्ञापयतीति विश्वरूपहलायुधप्रभृतयः। (8) स्तेयधात्वर्थानिष्पत्तिरित्यभिप्रायः। तथाहि,—'यत् परद्रव्यहरणं स्तेयं तत् परिकीर्त्तितं'। इति कात्यायनवचने परशब्दादात्मीयत्वव्यवच्छेदेनैव परकीयत्वस्यावगमात्। यथा मुद्गापचारे प्रतिनिधित्वेन माषप्राप्तौ, 'अयज्ञिया वै माषाः,' इति माषा-

निषिद्धाः। तत्र माषमात्रारब्धकमिश्रितानां निषेधः, नतु माष-मुद्गोभयारब्धकमिश्रितानां, तथा अत्रापि परमात्रद्रव्यस्यापहारएव स्तेयं, नतु स्वपरसाधारणस्याविभक्तदायस्य भोगादिनेति साधारणा-साधारणयोरसाधारणस्यैव शीघ्रप्रतीतेरिति। (9) अतएव परकीयत्वेन विशेषतोऽजानतस्तदपहारे स्तैन्यं, नतु स्वद्रव्यभ्रमेण परद्रव्यव्यवहर्त्तुरपीति जितेन्द्रदायभागप्रायश्चित्तविवेककृन्मतं। (10) तत्र स्वीयबुद्ध्या परकीयापहारे यत् अस्तेयत्वमुक्तं, तन्न समीचीनं, भागवतीयनृगोपाख्यानविरोधात्। तथाहि,—'कस्यचिद्द्विजमुख्यस्य भ्रष्टा गौर्मम गोधने। संपृक्ताऽविदुषा सा च मया दत्ता द्विजातये। तां नीयमानं तत्स्वामी दृष्ट्वोवाच ममेति च। ममेयं प्रतिग्राहेति नृगो मे दत्तवानिति। विप्रौ विवदमानौ माम् ऊचतुः स्वार्थसाधकौ। भगवान् दातापहर्त्ता च तच्छ्रुत्वा मेऽभवद्भ्रमः। तत्पापात् कृकलासत्वप्राप्तिश्च मे यथाऽभवत्। तावदश्राव-मात्मानं कृकलासतनुं प्रभो' इति॥ (11) यत्तु अनेकेषामङ्गुरीयक-समुदये सदृशतया आत्मीयाङ्गुरीयकभ्रमेण परकीयाङ्गुरीयकविक्रये न स्तेयत्वं, तदविशेषचिह्नितद्रव्याणां कपर्दकादीनां नानास्वामिका-नाम् एकत्र स्थापनदशायामेव परस्परद्रव्यविनिमयादेव परस्परविनि-योगे दोषाभाव इत्यवगत्य एकत्र स्थापनात्, अन्यथा दोषशङ्कया न तथा कुर्य्यादिति, यत्र कूटत्वादिना लाभार्थं स्थापितं तत्र स्तेयत्वं। (12) एतद्विषये मत्स्यपुराणं,—'अज्ञानाद्-यः पुमान् कुर्य्यात् परद्रव्यस्य विक्रयं। स निर्दोषो ज्ञानपूर्व्वं चौरवद्दण्ड-मर्हति'॥ इति एतदज्ञानकृतदण्डाभावपरमिति। (13) तेन पर-मात्रस्वत्वावच्छिन्नद्रव्ये परानुमतिमन्तरेण ममेदं यथेष्टविनियोज्य-मिति कृत्वा व्यवहारः स्तेयं। (14) स च क्वचिन्मानसः सङ्कल्प-रूपः, क्वचित् कायिकोदानविक्रयादिलक्षणः। (15) तस्य चाविभक्त-

भ्रात्रादिधनेषु असम्भवः। इदं परकीयमेव इदं ममैवेति विशेषा-
निश्चयात्। (16) अतएव कात्यायनः,—'बन्धुनापहृतं द्रव्यं
बलान्नैव प्रदापयेत्। बन्धूनामविभक्तानां भोगं नैव प्रदापयेत्'॥
अत्रापहृतपदं भाक्तं, सामादिना प्रदापयितव्यः, नतु बलात्. अवि-
भक्तेन यद्यधिकं भुक्तं तदसौ न दाप्यः। (17) एवञ्च निधेर्लाभेऽपि
न दोषः, नष्टस्वामिकत्वात्। तथाच मनुः,—'राजा लब्ध्वा निधिं
दद्याद्द्विजेभ्योऽर्द्धं द्विजः पुनः। विद्वान् अशेषमादद्यात् स सर्व्वस्य
प्रभुर्यतः। इतरेण निधौ लब्धे राजा षष्ठांशमाहरेत्। अनिवे-
दितविज्ञाता दाप्यस्तं दण्डमेव च'॥ (18) सम्भूयवाणिजिकानान्तु
नैतादृशं वचनाभावात्, प्रत्युत,—'जिह्मं त्यजेयुर्निर्लाभं',—इति
याज्ञवल्कीयेन वञ्चकस्य लाभशून्यं कृत्वा त्यागउक्तः, दायद्रव्यइव
वाणिजिकानामेकधनेऽनेकेषां स्वत्वाभावाच्च किन्तु मिलनात्तद-
निश्चयमात्रमिति।

CHAPTER IX.

(1) अथ स्त्रीधनं। तत्र कात्यायनः,—'प्राप्तं शिल्पैस्तु यद्वित्तं
प्रीत्या चैव यदन्यतः। भर्त्तुः स्वाम्यं भवेत्तत्र शेषन्तु स्त्रीधनं
स्मृतं'॥ अन्यतः पितृमातृभर्त्तृकुलव्यतिरिक्तात्, यल्लब्धं शिल्पेन वा
यदर्जितं, तत्र भर्त्तुः स्वातन्त्र्यं, तेन स्त्रिया अपि धनं न स्त्रीधनं
अस्वातन्त्र्यात्, एतद्व्यतिरिक्तधने स्वत्वं स्त्रियाएव दानाद्यधि-
कारात्। (2) मनुविष्णू। 'पत्यौ जीवति यः कश्चिदलङ्कारो-
धृतोभवेत्। न तं भजेरन् दायादाः, भजमानाः पतन्ति ते'॥ पत्युर-

दत्तेऽपि तदनुज्ञया परिहितोऽलङ्कारस्तावतैव भार्य्यायाः स्त्रीधनं भवतीति मेधातिथिः। (3) कात्यायनः,—'ऊढ़या कन्यया वापि पत्युः पितृगृहेऽथवा। भर्त्तुः सकाशात् पित्रोर्वा लब्धं सौदायिकं स्मृतं। सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते। यस्मात् तदाऽनृशंस्यार्थं तैर्दत्तं तत् प्रजीवनं। सौदायिके सदा स्त्रीणां स्वातन्त्र्यं परिकीर्त्तितं। विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि'॥ सुदायेभ्यः पितृमातृभर्त्तृकुलसम्बन्धिभ्योलब्धं सौदायिकं, आनृशंस्यम् अनैष्ठुर्य्यं। (4) नारदः,—'भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन् मृतेऽपि तत्। सा यथाकामम् अश्नीयाद्दद्याद्वा स्थावरादृते'॥ भर्त्तृदत्त-विशेषणात् भर्त्तृदत्तस्थावरादृते अन्यस्थावरं देयमेव। (5) अन्यथा, 'यथेष्टं स्थावरेष्वपि' इति कात्यायनोक्तं विरुध्येत। (6) कल्पतरुरत्नाकरयोः कात्यायनः,—'अपकारक्रियायुक्ता निर्लज्जा चार्थनाशिनी। व्यभिचाररता या च स्त्रीधनं नच सार्हति'॥ (7) याज्ञवल्क्यः,—'दुर्भिक्षे धर्म्मकार्य्ये वा व्याधौ संप्रतिरोधके। गृहीतं स्त्रीधनं भर्त्ता नाकामोदातुमर्हति'॥ संप्रतिरोधके भोजनाद्यवरोधकारिखुमर्णादिके। (8) अन्यत्र तु कात्यायनः,—'न भर्त्ता नैव च सुतो न पिता भ्रातरोनच। आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः'॥

CHPTER X.

(1) अथ स्त्रीधनाधिकारिणः। देवलः,—'सामान्यं पुत्रकन्यानां मृतायां स्त्रीधनं स्त्रियां। अप्रजायां हरेद्भर्त्ता माता भ्राता पितापि वा'॥ (2) अत्र द्वन्द्व-निर्द्देशात् पुत्रकन्ययोस्तुल्याधिकारः। (3)

अन्यतराभावे अन्यतरस्य तद्धनं। (4) एतयोरभावे, जढ़ाया-दुहितुः, पुत्रवत्याः सम्भावितपुत्रायाश्च, तुल्याधिकारः, स्वपुत्रद्वारेण पार्व्वणे,—'सपिण्डीकरणादूर्द्ध्वं यत् पितृभ्यः प्रदीयते। सर्व्वेष्वंश-हरा माता इति धर्म्मेषु निश्चयः'॥ इति शातातपोक्ततद्गोत्र्य-पतिपिण्डदानसम्भवात्। (5) तथाच नारदः, 'पुत्राभावे तु दुहिता तुल्यसन्तानदर्शनात्'। (6) अतएव एतादृशदुहित्रभावे पौत्राधिकारः। (7) तदभावे दौहित्राधिकारः,—'दौहित्रोपि ह्यमुत्रैनं सन्तारयति पौत्रवत्'। इति मनुवचने दौहित्रे पौत्र-धर्म्मातिदेशात्, पुत्रेण परिणीतदुहितुर्बाधात्, बाधकपुत्रेण बाध्यदुहितृ-पुत्रबाधस्य न्याय्यत्वात्। (8) तदभावे प्रपौत्रः,तद्गोत्र्यपिण्डदातृत्वात्। (9) तदभावे बन्ध्याविधवयोर्मातृधनाधिकारः, तयोरपि तत्प्रजा-त्वात्। (10) तदभावे तु भर्त्ता। (11) एतच्च न पितृमातृदत्तधन-विषयं, तत्र भ्रातुरधिकारात्। तथाच वृद्धकात्यायनः,—'पितृभ्या-ञ्चैव यद्दत्तं दुहितुः स्थावरन्धनं। अप्रजायामतीतायां भ्रातृगामि तु सर्व्वदा'॥ (12) मातुः परिणयनकाललब्धन्तु पुत्रसत्त्वेऽपि क्रमेण अनूढ़ोढ़दुहित्रोरेवाधिकारः,—'मातुः पारिणाय्यं स्त्रियो विभजेरन्' इति वशिष्ठोक्तेः। (13) 'स्त्रीधनं दुहितॄणाम् अप्रत्तानाम् अप्रतिष्ठितानाञ्च'। इति गौतमवचनेन प्रथमम् अप्रत्तानाम् अवाग्दत्तानां, तदभावे त्वप्रतिष्ठितानां वाग्दत्तानां, ईषदर्थे नञ्, तदभावे चकारसमुच्चितानाम् जढ़ानां, 'स्त्रीधनं दुहितॄणाम्,' इति सामान्यतः प्रागुक्तत्वात्, 'अप्रत्तानाम्' इत्यादेस्तु क्रमार्थत्वेनोप-संहारार्थत्वात्। (14) व्यक्तमाह मनुः,—'मातुश्च यौतुकं यत् स्यात् कुमारी-भागएव सः' इति। यौतुकपदं युमिश्रणे इत्यस्मात् सिद्धं, मिश्रता च स्त्री-पुंसयोर्विवाहात् भवति,—'यदेतत् हृदयं तव तदस्तु हृदयं मम, यदिदं हृदयं मम तदस्तु हृदयं तव',—इति

मन्त्रलिङ्गात्। 'यौतुकं यौतकञ्च तत्' इति वाचस्पति-मिश्रराय-मुकुटधृतात् यौतकमपि साधु। (15) परिणयनकालः परिणयन-पूर्व्वापरीभूतकालः, सच वृद्धिश्राद्धारम्भ-पत्यभिवादनान्तो विवाहतत्त्वे विवृतः। (16) यत्तु मनुवचनं,—'स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथञ्चन। ब्राह्मणी तद्धरेत् कन्या तदपत्यस्य वा भवेत्' इति॥ तत् 'पित्रा दत्तम्' इति विशेषणात् विवाहसमयादन्यदपि पितृदत्तं कन्याया एवेत्येतदर्थं, ब्राह्मणीपदन्तु कन्यामात्रपरं। यद्वा क्षत्रियादि-स्त्रीणामनपत्यानां पितृदत्तं धनं सपत्नीदुहिता ब्राह्मणीकन्या हरेत् न पुनः 'अप्रजस्त्रीधनं भर्त्तुः' इति वचनावकाशः, इति वचनार्थः। (17) तदभावे पुत्राधिकारः,—'दुहितॄणामभावे तु रिक्थं पुत्रेषु तद्भवेत्'। इति मनुवचनात्। (18) एवं पुत्राधिकारात् प्राक् दुहित्रधिकार-विधायकवचनान्तराण्यपि एतद्विषयकाणि। (19) पुत्राद्यभावे तु ब्राह्मादिपञ्चकविवाहकालीनं स्त्रीधनं भर्त्तुः, आसुरादित्रयविवाह कालीनन्तु मातुः, तदभावे पितुः। (20) यथा मनुः,—'ब्राह्म-दैवार्षगान्धर्व्वप्राजापत्येषु यद्धनं। अतीतायाम् अप्रजायां भर्त्तुरेव तदिष्यते। यत् तस्याः स्याद्धनं दत्तं विवाहेष्वासुरादिषु। अतीतायाम् अप्रजायां मातापित्रोस्तदिष्यते'॥ (21) कन्याधनाधिकारे क्रमम् आह बौधायनः,—'रिक्थं मृतायाः कन्याया गृह्णीयुः सोदराः स्वयं। तदभावे भवेन्मातुस्तदभावे भवेत् पितुः'॥ (22) अत्र क्रमदर्शनात् पूर्व्ववचने 'मातापित्रोः' इत्यत्र पाठक्रमेणाधिकारः, नतु द्वन्द्वनिर्द्देशात् समुच्चितेन। (23) वृहस्पतिः,—'मातुः स्वसा मातुलानी पितृव्यस्त्री पितृस्वसा। श्वश्रूः पूर्व्वजपत्नी च मातृतुल्याः प्रकीर्त्तिताः। यदाऽसाम् औरसोन स्यात् सुतोदौहित्रएव वा। तत्सुतो वा धनन्तासां स्वस्रीयाद्याः समाप्नुयुः'॥ (24) औरसपदं कन्यापुत्रोभयपरं, सुत-इति सपत्नीपुत्रपरं,—'सर्व्वासामेकपत्नीनाम् एका चेत् पुत्रिणी भवेत्।

सर्व्वास्तास्तेन पुत्त्रेण प्राह पुत्त्रवतीर्म्मनुः' ॥ इति मनुस्मृतेः। एक-पत्नीनामिति एकः पतिर्यासां ताः। ननु सुतपदम् औरसविशेषणं वैयर्थ्यात्, सपत्नीपुत्त्रसद्भावे स्वस्त्रीयाद्यधिकारापत्तेश्च। तत्सुतइति पौत्रसपत्नीपौत्रपरं, नतु दौहित्रपुत्त्रपरं तस्य स्वभोग्यभर्त्तृपिण्डदानान-धिकारात्। (25) अत्र प्रागुक्तानुसारात् दौहित्रपर्य्यन्तानन्तरमेव सपत्नीपुत्र-तत्पुत्रयोरधिकारः, नतु प्रागुक्तभर्त्रादिपितृपर्य्यन्ताभावे-ऽपीति वाच्यं, भर्त्रादीनां धनिभोग्यपार्व्वणपिण्डदानानधिकारात्। (26) तस्मादेतेषां सपत्नीपौत्रान्तानां 'तत्सुतोवा' इति वा-शब्दसमु-च्चितानां,—'सामान्यं पुत्रकन्यानां मृतायां स्त्रीधनं विदुः। अप्रजायां हरेद्भर्त्ता माता भ्राता पितापि वा' ॥ इति देवलोक्तानां भर्त्रादिपितृपर्य्यन्तानाञ्च अभावएव सत्स्वपि श्वशुरभ्रातृश्वशुरादिषु 'स्वस्त्रीयाद्याः' इत्यनेन भगिनीसुत-भर्त्तृज्येष्ठकनिष्ठोभयरूपभ्रातृपुत्र-जामातृ-देवराणां मातृस्वस्रादिधनेऽधिकारः अनन्यगतेर्वचनात्। (27) अत्र,—'त्रयाणाम् उदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तते। चतुर्थः संप्रदातैषां पञ्चमोनोपपद्यते' ॥ इति दायभागप्रकरणीयमनुस्मृतेः, 'पिण्डदोऽंशहरः' इति याज्ञवल्क्यीयात्, 'मातृतुल्याः प्रकीर्त्तिताः' इत्यनेन स्वस्त्रीयादीनां पुत्रत्वज्ञापनेन। (28) पिण्डदत्वसूचनस्य दायभागप्रकरणे उपकारतारतम्येन धनाधिकारक्रम-ज्ञापनैक-प्रयोजनकत्वात्। (29) 'मातुलोभागिनेयस्य स्वस्त्रीयोमातुलस्य च। श्वशुरस्य गुरोश्चैव सख्युर्मातामहस्य च। एतेषाञ्चैव भार्य्याभ्यः स्वसुर्मातुः पितुस्तथा। पिण्डदानन्तु कर्त्तव्यम्, इति वेदविदां स्थितिः' ॥ इति शातातपवचनात्। (30) पिण्डदान-विशेषेणैव एषा-मेषाम् अधिकारक्रमः प्रतिपत्तव्यः, पाठक्रमात् अर्थक्रमस्य बलवत्वात्, अन्यथा सर्व्वशेषे देवराधिकारे महाजनविरोधः स्यात्। (31) तत्र प्रथमं देवरः, तत्पिण्ड-तद्भर्त्तृपिण्ड-तद्भर्त्तृदेयपुरुषत्रयपिण्ड-दत्वात्

सपिण्डत्वाच्च भ्रातृ-स्त्रीधने अधिकारी। (32) तदभावे भ्रातृश्वशुर-देवरयोः सुतौ, तत्पिण्ड-तद्भर्तृपिण्ड-तद्भर्तृदेयपुरुषत्रयपिण्ड-दत्वात् सपिण्डत्वाच्च। (33) तयोरभावे त्वसपिण्डोऽपि भगिनीपुत्रः, तत्पिण्ड-तत्पुत्रदेयतत्पित्रादिपिण्डत्रयदत्वात्। (34) तदभावे भर्तृभागिनेयः, पुत्राद् भर्त्तुर्दुर्व्वलत्वेन तत्स्थानपातिनोरपि भगिनीपुत्र-भर्तृभागिनेययोस्तथैव बलाबलस्य न्याय्यत्वेन तद्भर्तृदेयपुरुषत्रयपिण्ड-दत्वात् तत्पिण्डदत्वात् तद्भर्तृपिण्डदत्वाच्च मातुलानीधनेऽधिकारी। (35) तदभावे भ्रातृपुत्रः, तत्पिण्ड-तत्पुत्रदेयतत्पित्रादिपिण्डत्रय-दत्वात् पितृस्वसृधने अधिकारी। (36) तदभावे श्वशुरयोः पिण्ड-दानात् जामाता श्वश्रूधनेऽधिकारी। (37) इति क्रमः, 'स्वस्त्रीयाद्याः' इति त्वधिकारिमात्रपरं न पाठिकक्रमपरं। (38) एषां षण्णां प्रातिस्विकोक्तानामभावे सपिण्डानन्तर्य्येण श्वशुरादिरधिकारी। (39) न च सपिण्डाभावे 'मातुः स्वसा' इति वचनं वाच्यं, अस्मिन् अधिकारिगणने देवरतत्सुतभ्रातृश्वशुरसुतानाम् अधिकारप्रापणात् आसन्नतर-श्वशुरभ्रातृश्वशुरादेः परित्यागादिति।

CHAPTER XI.

(1) अथापुत्रधनाधिकारिणः। (2) याज्ञवल्क्यः,—'पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा। तत्सुतोगोत्रजोबन्धुः शिष्यः सब्रह्मचारिणः। एषामभावे पूर्व्वस्य धनभाग् उत्तरोत्तरः। स्वर्यातस्य ह्यपुत्रस्य सर्व्ववर्णेष्वयं विधिः'॥ (3) तथा विष्णुः,—'अपुत्रस्य धनं पत्न्यभिगामि, तदभावे दुहितृगामि, तदभावे पितृगामि, तदभावे

मातृगामि, तदभावे भ्रातृगामि, तदभावे भ्रातृपुत्रगामि, तदभावे सकुल्यगामि, तदभावे बन्धुगामि, तदभावे शिष्यगामि, तदभावे सब्रह्मचारिगामि, तदभावे ब्राह्मणधनवर्ज्जं राजगामि' इति ॥ (4) अत्र अपुत्रपदं पुत्रपौत्रप्रपौत्राभावपरं तेषां पार्व्वणपिण्डदातृत्वाविशेषात् । (5) अतएव बौधायनवचने पुत्रपौत्रप्रपौत्रान् उपक्रम्य,—'सप्तखङ्गजेषु तद्दामो ह्यर्थोभवति' इत्युक्तं । (6) तद्यथा,—'प्रपितामहः पितामहः पिता स्वयं सोदर्य्याभ्रातरः सवर्णायाः पुत्रः पौत्रः प्रपौत्रः, एतान् अविभक्तदायादान् सपिण्डान् आचक्षते, विभक्तदायादान् सकुल्यान् आचक्षते, सप्तखङ्गजेषु तद्दामो ह्यर्थोभवति' इति ॥ (7) अस्यार्थः, पित्रादिपिण्डत्रयेषु सपिण्डनेन भोक्तृत्वात्, पुत्रादिभिस्त्रिभिस्तत्-पिण्डस्यैव दानात्, यश्च जीवन् यत्पिण्डदाता, स मृतः सन् सपिण्डनेन तत्पिण्डभोक्ता, एवं मध्यस्थितः पुरुषः, पूर्व्वेषां जीवन् पिण्डदाता, मृतश्च तत्पिण्डभोक्ता, परेषां जीवतां पिण्डसम्प्रदान-भूतआसीत्, मृतैश्च तैः सह दौहित्रादिदेयपिण्डभोक्ता, अतोयेषामयं पिण्डदाता, ये च तत्पिण्डदातारः, ते अविभक्तं पिण्डरूपं दायमश्नन्तीति अविभक्तदायादाः, सपिण्डाः, पञ्चमस्य पूर्व्वस्य मध्यमः पञ्चमोन पिण्डदाता नच तत्पिण्डभोक्ता, एवम् अधस्तनोऽपि पञ्चमोन मध्यमस्य पिण्डदाता नापि तत्पिण्डभोक्ता, तेन वृद्धप्रपितामहात् प्रभृति त्रयः पूर्व्वपुरुषाः, प्रतिनप्तृतः प्रभृत्यध-स्तनास्त्रयः पुरुषाः, एकपिण्डभोक्तृत्वाभावात् विभक्तदायादाः सकुल्याइत्याचक्षते । (8) इदं सपिण्डत्वं सकुल्यत्वञ्च दायग्रहणार्थम् इत्युक्तं, अशौचविवाहाद्यर्थञ्च पिण्डलेपभुजामपि इति विवृतं शुद्धि-तत्त्वे । (9) पुत्रादिविभागक्रमं व्यक्तमाह रत्नाकरधृतकात्यायनः,—'अविभक्ते मृते पुत्रे तत् सुतं रिक्थभागिनं । कुर्व्वीत जीवनं येन लब्धं नैव पितामहात् । लभेतांशं स पित्र्यन्तु पितृव्यात् तस्य वा

सुतात्। सएवांशस्तु सर्व्वेषां भ्रातॄणां न्यायतोभवेत्। लभेत तत्-सुतोवापि निवृत्तिः परतोभवेत्' ॥ (10) जीवनं जीवनोचितद्रव्यं। यदा भ्रातॄणां कश्चिदेकोन विद्यते, तदा तत्सुतस्य पित्रंशोदातव्यः। यदा विपन्नस्याप्यनेकपुत्राः, तदा एकः पित्रंशस्तेषां विभज्य दातव्यः। एवं तत्सुतोऽप्यंशं लभेत। तत्सुतस्य भागोनिवर्त्तत इत्यर्थः। (11) एतच्च सहवासविषयं। यथा देवलः,—'अविभक्तविभक्तानां कुल्यानां वसतां सह। भूयोदायविभागः स्यादाचतुर्थादिति स्थितिः' ॥ अविभक्तानामिव विभक्तानां सहवसतां संसृष्टानां वा पुनर्व्विभागः, भ्रातृ-तत्सुत-तत्सुत-पर्य्यन्तमेव,तत्सुताच्चतुर्थोनिवर्त्तते इति। (12) प्रागुक्त-सप्तमपर्य्यन्तं विभागदानन्तु भिन्नदेशादागतानाम्, इति न विरोधः। (13) तेन प्रपौत्रपर्य्यन्तानाम् अभावे पत्नी धनाधिकारिणी। (14) यथा कात्यायनः,—'भर्त्तृदायं मृते पत्यौ विन्यसेत् स्त्री यथेष्टतः। विद्य-माने तु संरक्षेत् क्षपयेत् तत्कुलेऽन्यथा। अपुत्रा शयनं भर्त्तुः पाल-यन्ती व्रते स्थिता। भुञ्जीतामरणात् क्षान्ता दायादा ऊर्द्ध्वमाप्नुयुः' ॥ 'यथेष्टतः' इति धर्म्मार्थं। (15) तथाच व्यासः,—'लोकान्तरस्थं भर्त्ता-रम् आत्मानञ्च वरानने। तारयत्युभयं नारी नित्यं धर्म्मपरायणा' ॥ (16) मदनपारिजातधृता स्मृतिः,—'यद्यद् इष्टतमं लोके यद्यत् पत्युः समीहितं। तत्तद्-गुणवते देयं पतिप्रीणन-काम्यया' ॥ (17) 'भर्त्तुः शयनं पालयन्ती' नान्यगामिनी। अतएव हरिवंशीय-पुण्यकव्रतोपा-ख्याने,—'दानोपवासपुण्यानि सुकृतान्यप्यरुन्धति। निष्फलान्यस-तीनां हि पुण्यकानि तथा शुभे' ॥ (18) तथा हृहस्पतिः,—'अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता। पत्न्येव दद्यात् तत्पिण्डं कृत्स्नमंशं लभेत च' ॥ तत्पिण्डमित्यत्र तदित्यनुवर्त्तते, तच्छब्देन भर्त्तुः परामर्शात्, भर्त्तुः कृत्स्नमंशं यावदंशं हरेत्, नतु वर्त्तनजीवनो-चितमात्रं। (19) पत्नी सवर्णा ज्येष्ठा पत्नीत्वभिधानात्। (20)

ज्येष्ठत्वमाह मनुः। 'यदि स्वाश्च पराश्चैव विन्देरन् योषितोद्विजाः। तासां वर्णक्रमेणैव ज्यैष्ठं पूजा च वेश्म च'॥ (21) तदन्यस्या-भार्य्यायाः पोषणमात्रमाह नारदः,—'भ्रातॄणामप्रजः प्रेयात् कश्चिच्चेत् प्रव्रजेच्च वा। विभजेरन् धनन्तस्य शेषास्ते स्त्रीधनं विना। भरणञ्चास्य कुर्व्वीरन् स्त्रीणाम् आजीवनक्षयात्। रक्षन्ति शय्यां भर्त्तुश्चेत् आच्छिन्द्युरितरासु च'॥ प्रेयात् म्रियेत। (22) एवं पत्नीभार्य्याभेदात्,—'ततोदायमपुत्रस्य विभजेरन् सहोदराः। तुल्या दुहितरोवापि ध्रियमाणः पितापि वा। सवर्णा भ्रातरो माता भार्य्या चैव यथाक्रमं। तेषामभावे गृह्णीयुः कुल्यानां सहवासिनः'॥ इत्यादिवचनानि व्यवस्थेयानि-तुल्याः सवर्णाः, ध्रियमाणः जीवन्। (23) वस्तुतस्तु एतदुक्तक्रमः सर्व्वत्र न ग्राह्यः, उपकारतारतम्य-मूलकवक्ष्यमाणवचन-विरोधात्। अतएवात्र क्रमानाख्यासूचकम् वापि अपिवा इत्युक्तं। (24) पत्न्यभावे दुहितरः, अत्र बहुवचनात् कन्योढ़ा-दौहित्राणां परिग्रहः। (25) तत्र कन्योढ़योस्तु,— 'अपुत्रस्य मृतस्य कुमारी रिक्थं गृह्णीयात्, तदभावे चोढ़ा' इति पराशरवचनात् क्रमः। (26) तदभावे दौहित्रः,— 'पौत्रदौहित्रयोर्लोके विशेषोनास्ति धर्म्मतः। तयोर्हि मातापितरौ सम्भूतौ तस्य देहतः'॥ इति मनुवचने पौत्रतुल्यत्वाभिधानेन यथा पुत्राभावे पौत्रः तथा दुहित्रभावे दौहित्रः। (27) अतएव गोविन्दराजधृतोविष्णुः,—'अपुत्रपौत्रे संसारे दौहित्राधनमाप्नुयुः। पूर्व्वेषां हि स्वधाकारे पौत्रदौहित्रकाः समाः'॥ (28) दौहित्रा-भावे पितरौ, तत्र प्रथमं पिता ततोमाता, पूर्व्वोक्त-विष्णुस्मृतेः। (29) तदभावे भ्रातरः, अत्रापि बहुवचनं सोदरासोदरसंसृष्टत्व-भेदेन अधि-कारिभेदार्थं। (30) अतएव एकपितृजातयोरपि सोदरविमातृ-जयोर्मृतदेयषट्पुरुषपिण्डदातृत्वेन सोदरस्यैव धनाधिकारः, नतु

पित्रादित्रयमात्रपिण्डदातुर्विमातृजस्य। (31) क्वचित्तु संसृष्टत्वेन विमातृजस्यापि असंसृष्टसोदरेण सह तुल्याधिकारिता। सोदरस्य संसृष्टत्वेन सएव गृह्णीयात्, न संसृष्टोऽपि विमातृजइति। (32) तथाच याज्ञवल्क्यः,—'संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः। दद्याच्चापहरेदंशं जातस्य च मृतस्य च। अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्योधनं हरेत्। असंसृष्ट्यपि चादद्यात् संसृष्टोनान्यमातृजः'। (33) संसृष्टिनमाह बृहस्पतिः,—'विभक्तो यः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः। पितृव्येणाथवा प्रीत्या सतु संसृष्ट उच्यते'॥ (34) तेन विभागानन्तरं मैत्र्यात् पितापुत्रयोः, भ्रात्रोः, पितृव्यभ्रातृपुत्रयो र्वा यथायथम् एकत्रावस्थानं संसर्गः, तद्युक्तः संसर्गी। (35) एवम्भूतस्य संसर्गिणोमृतस्य धनं तज्जातस्यापत्यस्य अपरः संसर्गी दद्यात्, तदपत्याभावे संसर्गी स्वयं गृह्णीयात्। (36) एवं, 'सोदरस्य तु सोदरः'। (37) अत्र विशेषयति यमः,—'अविभक्तं स्थावरं यत् सर्व्वेषामेव तद्भवेत्। विभक्तं स्थावरं ग्राह्यं नान्योदर्य्यैः कदाचन'॥ सर्व्वेषां सोदरासोदराणां, स्थावरातिरिक्तन्तु विभक्ताविभक्तं सोदराणामेव इति अर्थतः सिद्धं। (38) व्यक्तमाह मनुः,—'येषां ज्येष्ठः कनिष्ठो वा हीयेतांशप्रदानतः। म्रियेतान्यतरोवापि तस्य भागो न लुप्यते'॥ अंशप्रदानतो विभागात् पूर्व्वं हीयेत प्रव्रज्यादिनेति शेषः। (39) केषाम् अंशविभागः, इत्यत्राह सएवः,—'सोदर्य्याविभजेरंस्तं समेत्य सहिताः समं। भ्रातरो ये च संसृष्टाः भगिन्यश्च सनाभयः'॥ (40) बृहस्पतिः,—'विभक्ता भ्रातरोये च संप्रीत्यैकत्र संस्थिताः। पुनर्विभागकरणे तेषां ज्यैष्ठ्यं न विद्यते। यदि कश्चित् प्रमीयेत प्रव्रजेद्वा कथञ्चन। न लुप्यते तस्य भागः सोदरस्य विधीयते। या तस्य भगिनी सा तु ततोऽंशं लब्धुमर्हति। अनपत्यस्य धर्म्मोऽयम् अभार्य्यापितृकस्य च। संसृष्टानान्तु यः कश्चित् विद्याशौर्य्यादिना धनं। प्राप्नोति

तस्य दातव्यो ह्यंशः शेषाः समांशिनः’ ॥ (41) अत्र संसृष्टानां ज्येष्ठांशाभावोवर्णत्रयाणां बोध्यः । शूद्रस्य तु सर्व्वदा ज्येष्ठांशाभावात् । (42) तथाच मनुः,—‘समवर्णासु ये जाताः सर्व्वे पुत्रा-द्विजन्मनां । उद्धारं ज्यायसे दत्त्वा भजेरन्नितरे समं । शूद्रस्य तु सवर्णैव नान्या भार्य्योपदिश्यते । तस्यां जाताः समांशाः स्युर्यदि पुत्रशतं भवेत्’ ॥ (43) समांशाः समभागाएव भवेयुः, नोद्धारः कस्यचिद्देयः, इति कुल्लूकभट्टः । (44) युक्तञ्चैतत् तथाहि,—‘ज्येष्ठस्य विंशउद्धारः सर्व्व-द्रव्याच्च यद्वरं । ततोऽर्द्धं मध्यमस्य स्यात् तुरीयन्तु यवीयसः’ ॥ इति मनुना सामान्यतो ज्येष्ठादीनामुद्धाराभिधानात् ‘द्विजन्मनां’ इत्यस्य वर्णमात्रोपलक्षकत्वशङ्कानिरासाय उत्तरवचनोक्तरार्द्धं । (45) नच पुत्रामनरकत्राटत्वाविशेषाच्च शूद्रस्याप्यधिकारइति वाच्यं, तद्-निस्तारकमध्यमकनीयसोरर्द्धपादोद्धारदर्शनेन तस्याप्रयोजकत्वात् । (46) नचोद्धारांशयोर्भेदात् समांशिताभिधानेन पूर्व्वोक्तासवर्णाजात-विषमांशभागएव शूद्रस्य निषिध्यते, नोद्धारः, इति वाच्यं, ‘शूद्रस्य तु सवर्णैव’ इति पूर्व्वार्द्धेनैव तत्सिद्धमिति । (47) द्विजन्मनामप्युद्धार-निरासाय समांशता मनुना विहिता, समानं समवर्णास्विति वचन-मभिधाय,—‘द्विप्रकारोविभागस्तु दायादानां प्रकीर्त्तितः । वयोज्येष्ठ-क्रमेणैकः परा समांशकल्पना’ इति॥ प्रकीर्त्तित इत्यत्र प्रदर्शित इति बृहस्पतिः । (48) अत्र भगिन्यधिकारोविवाहोचितद्रव्यलाभाय, मुनिभिः संग्रहकृद्भिस्तथोक्तत्वात् । (49) अभार्य्यापितृकस्येत्यत्र पितृ-पदम्, एकशेषात् पितृमातृपरं, मातुरभावे भ्रात्रधिकारस्य विष्णु-दिभिरुक्तत्वात् । (50) ततश्च, ‘संसृष्टिनस्तु संसृष्टी’ इत्येतद्वचनं तुल्य-रूपसम्बन्धिसमवाये संसर्गकृतविशेषप्रतिपत्त्यर्थं, तेन सोदराणां सापत्नानां भ्रातृपुत्राणां पितृव्यानां तुल्यानां सद्भावे संसर्गी गृह्णीयात् वाक्यादविशेषश्रुतेः, पूर्व्ववचने सर्व्वेषामेव प्रकृतत्वात् सर्व्वेषु चापेक्षा-

सम्भवात्, अतोन भ्रातृमात्रविषयमिदं वचनम्, इति जीमूतवाहनः। (51) सोदरे त्वसंसृष्टिनि संसृष्टिन्यसोदरे च सति कतरस्तावद् गृह्णीयात्, एवं सोदरासोदरयोः संसृष्टयोः सद्भावे कतरः। (52) इत्यत्र प्रथमत आह 'अन्योदर्य्यस्तु' इति, अन्योदर्य्यः पुनः संसृष्टी सन् गृह्णीयात्, नान्योदर्य्यमात्रः, किन्तु असंसृष्ट्यपि पूर्व्ववचनस्थसोदर-पदानुषङ्गात् प्राप्तः सोदरश्च गृह्णीयात्, तेनैकत्र विषये पूर्व्ववचनोक्त-संसृष्टत्वसोदरत्वयोरेकशः सम्बन्धेन तुल्यत्वात् उभयोर्विभज्य ग्रहणं। (53) द्वितीये आह,—'संसृष्टोनान्यमातृजः' इति सोदरे संसृष्टिनि सति अन्यमातृजः संसृष्ट्यपि न गृह्णीयात्, अर्थात् तत्र संसृष्टी सोदर-एव गृह्णीयात्, संसृष्टत्वाविशेषेऽपि सोदरत्वेन तस्यैव बलवत्त्वात्। (54) दायभागकारस्तु अन्योदर्य्यस्तु संसृष्टो सन् सत्यपि सोदरेऽसंसृष्टिनि धनं हरेत्, नान्योदर्य्यः असंसृष्ट्यपि गृह्णीयात्, इति पूर्व्वार्द्धस्यार्थः। तत्र किं सोदरस्तदानीं न गृह्णीयादेव, इत्यपेक्षायाम् उत्तरार्द्धेनोक्तं,— 'असंसृष्ट्यपि चादद्यात्' सोदर इत्यनुषज्यते, न संसृष्टोऽन्यमातृजः केवलः, किन्तु उभाभ्यामेव विभज्य ग्रहीतव्यम् इत्याहुः। (55) मिताक्षरादयोऽप्येवं। (56) याज्ञवल्क्यदीपकलिकायां शूलपाणि-महामहोपाध्यायास्तु, 'अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्यधनं हरेत्'। असंसृष्ट्यपि सोदरएव गृह्णीयात्, नतु संसृष्टः सापत्नो-भ्राता। संसृष्ट-इति गर्भसंसृष्टः सोदर इति केचित्। नान्योदर्य्योधनं हरेदिति पाठे अन्योदर्य्यः सन् धनं न गृह्णीयात् इति व्याख्या। असंसृष्टिसोदरस्याधि-कारार्थमिदं वचनम्, अतोन पुनरुक्तिरित्याहुः। (57) रत्नाकर-प्रभृतयस्तु,—यस्तु कल्पतरौ नान्योदर्य्यधनं हरेदिति पाठोदृश्यते, सः, मूलभूतयाज्ञवल्क्य-मिताक्षरा-पारिजात-हलायुध-ग्रन्थेषु, नान्योदर्य्यो-धनं हरेदिति पाठदर्शनात्, तदनुसारव्याख्यादर्शनाच्च, लिपिकर-प्रमादः—इत्याहुः। (58) भ्रातृणामभावे तत्सुतः। तत्र प्रथमं सोदर-

पुत्रः,—'स्वेन भर्त्रा सह श्राद्धं माता भुङ्क्ते स्वधामयं। पितामही च स्वेनैव स्वेनैव प्रपितामही' ॥ इति बृहस्पतिवचनात्, सोदरभ्रातृ-पुत्रदत्तपितामहपिण्डे धनिमातुर्भोगश्रुतेस्तद्गतधनत्वेन तथोपकार-दर्शनात्। (59) तदभावे वैमात्रेयपुत्रः। (60) तदभावे गोत्रजः। (61) तत्र,—'त्रयाणामुदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तते। चतुर्थः सम्प्रदातैषां पञ्चमोनोपपद्यते। अनन्तरः सपिण्डाद्-यस्तस्य तस्य धनं हरेत्' ॥ इति मनूक्तात् 'तस्य' मृतस्य धनिनः, 'सपिण्डात्' सपिण्ड-मध्यात्, 'यः अनन्तरः' सन्निहिततरः 'तस्य' धनं भवेत् एवमेव कुल्लूकभट्टः। (62) 'बहवो ज्ञातयोयत्र सकुल्या बान्धवास्तथा। योह्यासन्नतरस्तेषां सोऽनपत्यधनं हरेत्' ॥ इति बृहस्पत्युक्तत्वाच्च। (63) पिण्डदानसम्बन्धतारतम्येन आसन्नजननतारतम्येन च धनेषु अधि-कारी। (64) तत्र यथा दौहित्रान्तस्वसन्तानाभावेऽन्योऽधिकारी एवं भ्रातृपुत्राभावे तद्दौहित्रान्तः पितुः सन्तानोऽधिकारी। (65) तदभावे पितामहः। (66) तदभावे पितामही। 'अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात्। मातर्य्यपि च वृत्तायां पितुर्माता धनं हरेत्' ॥ इति मनुवचनात् यथा पित्रभावे माता तथा पितामहाभावे पितामही। (67) तदभावे पितामहदौहित्रान्तसन्तानः पितरि तथा दर्शनात्। (68) एवं प्रपितामहः प्रपितामही प्रपितामहदौहित्रान्तसन्ताना-अपि। (69) मृतभोग्यपिण्डदात्रभावे बन्धुरिति मातामहमातुलादिः। (70) तत्रापि पित्रादिवत् सति मातामहे सएव। (71) तदभावे यथाक्रमं मातुलादिः, मृतदेयमातामहादिपिण्डदत्वात्। (72) तदभावे सकुल्योविभक्तपिण्डः, प्रतिनमृतः प्रभृति पुरुषत्रयमधस्तनं वृद्धप्रपितामहादिसन्ततिश्च (73) अतएव दायक्रमता,—ननु सहोदर-भ्रातृपुत्रवत् पितृव्यस्यापि धनिदेयपूर्व्वपुरुषद्वयपिण्डदत्वात् धनि-पितृव्यभ्रातृपुत्रयोस्तुल्योऽधिकारः स्यात्, उच्यते, पितृव्योहि धनि-

पितामहप्रपितामहयोः पिण्डदः, भ्रातृपुत्रस्तु धनिपितरं प्रधानमादाय पुरुषद्वयपिण्डदः, इति सएव बलवान्, इति पितृव्यात् पूर्व्वमधिक्रियते—इत्युक्तं। (74) एवं यत्र मृतस्य पितृव्यमृतपितृव्यपुत्रयोः सत्त्वे धनिदेयपितामहप्रपितामहपिण्डदातृत्वाविशेषेऽपि जननसन्निकर्षाधिक्येन पितृव्यस्यैवाधिकारः। (75) 'अनेकपितृकानान्तु पितृतो भागकल्पना'। इत्यत्र जननसान्निध्यतारतम्येन भागदर्शनात्। (76) अतएव मिताक्षरायां पितामहपितृव्यतत्पुत्राः क्रमेणाधिकारिण-इत्युक्तं। (77) विवादचिन्तामणावपि अपुत्रधनाधिकारे भ्रातुरभावे तत्पुत्रः तदभावे आसन्नसपिण्ड-इत्युक्तं। (78) बृहस्पत्युक्तबान्धवा इत्यनेन यथाक्रमं आत्मपितृमातृबान्धवा धनाधिकारिणः, ते च,—'आत्मपितुः स्वसुः पुत्राः, आत्ममातुः स्वसुः सुताः। आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः। पितुः पितुः स्वसुः पुत्राः पितुर्मातुः स्वसुः सुताः। पितुर्मातुलपुत्राश्च विज्ञेयाः पितृबान्धवाः। मातुर्मातुः स्वसुः पुत्राः, मातुः पितुः स्वसुः सुताः। मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवाः'॥ (79) आपस्तम्बः,—'अन्तेवासी वार्थांस्तदर्थेषु धर्म्मकृत्येषु योजयेत्, दुहिता वा'। इति। तदर्थेषु मासिकादिना तद्भोगार्थं धर्म्मकृत्येषु इति अदृष्टार्थमिति। (80) एवञ्च यस्य मृतस्य धनं देशान्तरस्थतद्धनाधिकारिसत्त्वे तद्धनविनाशसम्भावनायां तदौर्द्ध्वदेहिककर्म्मार्थं तत्पुण्यार्थञ्च येन केनापि दातुं युक्तं। (81) 'यदृच्छयापि यः कुर्य्यादार्त्विज्यं प्रीतिपूर्व्वकं'। इति नारदवचने तस्यापि प्रतिनिधित्वात्। एतत् प्रपञ्चितं शुद्धितत्त्वे। (82) दायभागकृतापि,—सर्व्वत्रोक्तरीत्या मृतधनस्य मृतार्थत्वमनुसन्धेयम्—इति वदताप्येतत् स्वहस्तितम्। (83) इति महामहोपाध्यायश्रीहरिहरभट्टाचार्य्यात्मजश्रीरघुनन्दनभट्टाचार्य्यविरचितं स्मृतितत्त्वे दायतत्त्वं समाप्तम्।

पुत्रः,—'स्वेन भर्त्रा सह श्राद्धं माता भुङ्क्ते स्वधामयं। पितामही च स्वेनैव स्वेनैव प्रपितामही'॥ इति बृहस्पतिवचनात्, सोदरभ्रातृपुत्रदत्तपितामहपिण्डे धनिमातुर्भोगश्रुतेस्तत्कृतधनत्वेन तथोपकारदर्शनात्। (59) तदभावे वैमात्रेयपुत्रः। (60) तदभावे गोत्रजः। (61) तत्र,—'त्रयाणामुदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तते। चतुर्थः सम्प्रदातैषां पञ्चमोनोपपद्यते। अनन्तरः सपिण्डाद्-यस्तस्य तस्य धनं हरेत्'॥ इति मनूक्तात् 'तस्य' मृतस्य धनिनः, 'सपिण्डात्' सपिण्डमध्यात्, 'यः अनन्तरः' सन्निहिततरः 'तस्य' धनं भवेत् एवमेव कुल्लूकभट्टः। (62) 'बहवो ज्ञातयोयत्र सकुल्या बान्धवास्तथा। योह्यासन्नतरस्तेषां सोऽनपत्यधनं हरेत्'॥ इति बृहस्पत्युक्तत्वाच्च। (63) पिण्डदानसम्बन्धतारतम्येन आसन्नजननतारतम्येन च धनेषु अधिकारी। (64) तत्र यथा दौहित्रान्तस्वसन्तानाभावेऽन्योऽधिकारी एवं भ्रातृपुत्राभावे तद्दौहित्रान्तः पितुः सन्तानोऽधिकारी। (65) तदभावे पितामहः। (66) तदभावे पितामही। 'अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात्। मातर्य्यपि च वृत्तायां पितुर्माता धनं हरेत्'॥ इति मनुवचनात् यथा पित्रभावे माता तथा पितामहाभावे पितामही। (67) तदभावे पितामहदौहित्रान्तसन्तानः पितरि तथा दर्शनात्। (68) एवं प्रपितामहः प्रपितामही प्रपितामहदौहित्रान्तसन्तानाअपि। (69) मृतभोग्यपिण्डदात्रभावे बन्धुरिति मातामहमातुलादिः। (70) तत्रापि पित्रादिवत् सति मातामहे सएव। (71) तदभावे यथाक्रमं मातुलादिः, मृतदेयमातामहादिपिण्डदत्वात्। (72) तदभावे सकुल्योविभक्तपिण्डः, प्रतिनमृतः प्रभृति पुरुषत्रयमधस्तनं वृद्धप्रपितामहादिसन्ततिश्च (73) अतएव दायकृता,—ननु सहोदरभ्रातृपुत्रवत् पितृव्यस्यापि धनिदेयपूर्व्वपुरुषद्वयपिण्डदत्वात् धनिपितृव्यभ्रातृपुत्रयोस्तुल्योऽधिकारः स्यात्, उच्यते, पितृव्योहि धनि-

पितामहप्रपितामहयोः पिण्डदः, भ्रातृपुत्रस्तु धनिपितरं प्रधानमादाय पुरुषद्वयपिण्डदः, इति सएव बलवान्, इति पितृव्यात् पूर्व्वमधिक्रियते—इत्युक्तं। (74) एवं यत्र मृतस्य पितृव्यमृतपितृव्यपुत्रयोः सत्त्वे धनिदेयपितामहप्रपितामहपिण्डदातृत्वाविशेषेऽपि जननसन्निकर्षाधिक्येन पितृव्यस्यैवाधिकारः। (75) 'अनेकपितृकाणान्तु पितृतो भागकल्पना'। इत्यत्र जननसान्निध्यतारतम्येन भागदर्शनात्। (76) अतएव मिताक्षरायां पितामहपितृव्यतत्पुत्राः क्रमेणाधिकारिण-इत्युक्तं। (77) विवादचिन्तामणावपि अपुत्रधनाधिकारे भ्रातुरभावे तत्पुत्रः तदभावे आसन्नसपिण्ड-इत्युक्तं। (78) वृहस्पत्युक्तबान्धवा इत्यनेन यथाक्रमं आत्मपितृमातृबान्धवा धनाधिकारिणः, ते च,—'आत्मपितुः स्वसुः पुत्राः, आत्ममातुः स्वसुः सुताः। आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः। पितुः पितुः स्वसुः पुत्राः पितुर्मातुः स्वसुः सुताः। पितुर्मातुलपुत्राश्च विज्ञेयाः पितृबान्धवाः। मातुर्मातुः स्वसुः पुत्राः, मातुः पितुः स्वसुः सुताः। मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवाः'॥ (79) आपस्तम्बः,—'अन्तेवासी वार्थांस्तदर्थेषु धर्म्मकृत्येषु योजयेत्, दुहिता वा'। इति। तदर्थेषु मासिकादिना तद्भोगार्थं धर्म्मकृत्येषु इति अदृष्टार्थमिति। (80) एवञ्च यस्य मृतस्य धनं देशान्तरस्थतद्धनाधिकारिसत्त्वे तद्धनविनाशसम्भावनायां तदौर्द्ध्वदेहिककर्म्मार्थं तत्पुण्यार्थञ्च येन केनापि दातुं युक्तं। (81) 'यदृच्छयापि यः कुर्य्यादार्त्विज्यं प्रीतिपूर्व्वकं'। इति नारदवचने तस्यापि प्रतिनिधित्वात्। एतत् प्रपञ्चितं शुद्धितत्त्वे। (82) दायभागकृतापि,—सर्व्वत्रोक्तरीत्या मृतधनस्य मृतार्थत्वमनुसन्धेयम्—इति वदताप्येतत् स्वहस्तितम्। (83) इति महामहोपाध्यायश्रीहरिहरभट्टाचार्य्यात्मजश्रीरघुनन्दनभट्टाचार्य्यविरचितं स्मृतितत्त्वे दायतत्त्वं समाप्तम्।

ERRATA.

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TRANSLATION

OF THE

DAYATATTWA

OF

RAGHUNANDANA.

CONTENTS.

SUCCESSION TO STRIDHAN PROPERTY.

*1st to non-*Yautuka *or property other than nuptial gifts, heirs are,—*

1. Son and maiden daughter together, in default of either the other,

2. Married daughter having or likely to have a son,

3. Son's son, 4. Daughter's son, 5. Son's son's son, 6. Barren or sonless widowed daughter,

7. Stepson, 8. Stepson's son,

9. Husband, 10. Brother, 11. Mother, 12. Father, (to property other than gifts by the parents,)

And to Property given by either of the parents,

9. Brother instead of husband, 10. Mother, 11. Father, 12. Husband :

2nd to Yautuka or nuptial presents,

1. Unaffianced daughter, 2. Betrothed daughter, 3. Married daughter having or likely to have male issue,

4. Son, 5. Daughter's son, 6. Son's son, 7. Son's grandson,

8. Stepson, 9. Stepson's son,

10. Husband, 11. Brother, 12. Mother, 13. Father, if the marriage was celebrated in an approved form,

10. Brother, 11. Mother, 12. Father, 13. Husband, if in a disapproved form :)

To both descriptions of Stridhan, after the above mentioned relations,

14. Husband's younger brother, 15. Husbands's brother's son, 16. Sister's son, 17. Husband's sister's son, 18. Brother's son, 19. Son-in-law :

20. Father-in-law, 21. Husband's elder brother, 22. Other Sapindas :

To Maiden's Stridhan,

1. Brother, 2. Mother, 3. Father.

ORDER OF SUCCESSION TO THE PROPERTY OF MALE.

1-3. Puttra or male issue limited by commentators to three degrees only (but unreasonably); they take *per stirpes* the nearest excluding the more remote in each line :

4 Widow, 5 Daughter having or likely to have son, 8 Daughter's son,

7. Father, 8. Mother, 9. Brother, 10. Brother's son, 11. Brother's son's son, 12. Father's daughter's son;

13. Paternal grandfather, 14. Grandmother, 15. Their son, 16. Their Grandson, and 17. Their Great-grandson (in the male line,) and 18. Their Daughter's son;

19. Paternal Great-grand-father, 20. Great-grand-mother, 21. Their son, 22. Their Grandson, and 23. Their Great-grandson (in the male line,) and 24. Their Daughter's son ;

25. Maternal grand-father, 26 his son, 27. Grandson, and 28. Great-grandson (in the male line ;)

(29-61 theoretically) Sakulyas,

(62-208 theoretically)—Samánodakas,

209 &c. Bandhus or cognates such as the Brother's daughter's son, the other maternal relations and the parents' maternal relations and the like, the same as in the Mitákshará, save and except the four daughter's-sons and the four reciprocal maternal relations mentioned above.

The text enumerating nine cognate relations is cited ; they are the three cognate first consins of the man himself and of both parents ; of them, three are placed before the Sakulyas.

DAYATATTWA

OF

RAGHUNANDANA.

CHAPTER I.

1. *Om!* salutation be to Ganesa. Having prostrated himself before Vásudeva, the Lord of the universe, eternal, whose essence consists of omniscience and beatitude, the fortunate Raghunandana discusses the principles of the Law of Heritage.

2. In this treatise are briefly expounded, the determination (of the meaning) of Partition of Heritage; also the Distribution effected by the father; likewise Partition by brothers; Exclusion from shares; Partibility and Impartibility; the Removal of doubt regarding the fact of partition having been made; the Distribution of what was concealed; Woman's property; and the Right of succession thereto; and the Heirs to the property of a sonless man.

3. First, (the meaning of the term) Partition of Heritage (is discussed).

4. On that subject Nárada says:—"Where the division of the paternal property is instituted by sons, that topic of litigation is, by the wise, called Partition of Heritage." "Property" means wealth; "paternal" signifies acquired through the relation of paternity; "where" relates to "the topic of litigation".

5. This term "Heritage," by derivation, signifies what is given. Here the use of the verb (*dá*) is secondary; since there is a similarity (of the secondary with the primary meaning of the term) in the consequence, namely that of constituting another's right of property after annulling the previous right of a person who is dead or gone to retirement or the like. But there is no abdication on the part of the deceased, and the like, in the form of an intention, such as, "This property is no longer mine", which has the effect of putting an end to one's right of property.

6. Likewise, from the use of the term "Heritage" to signify one's property, is inferred the cessation of the right of the previous owner. And to that property accrues others' right, dependant on relation to the former owner, by reason of the text of Baudháyana, which says "when there are sons, the property goes to them". The meaning is, if there are sons at the time of the cessation of the father's right, the property which was the subject of that right descends to the sons.

7. As for the text of Gautama, however, cited in the Mitákshará, namely,—"Property is taken by reason of ownership through birth alone: this is said by the sages,"— that also is to be construed in the following way:— inasmuch as it is through the relation of mere birth,— which is the cause of sonship, which is stronger than any other relation,—that the son's right to the property of the father accrues at the time of the cessation of the father's right, the son and not any other relative, should take that property :—this is intended by the sages.

8. Nor can it be argued that even while the father's right continues, the son's right accrues, at the time of his

birth, to the property of the father: for, this meaning would be inconsistent with the text of Devala, which says,—"When the father is dead let the sons divide the father's wealth; for, sons have not ownership while the father is alive and free from defect." "Free from defect" signifies, not degraded.

9. Accordingly, Nárada, in the commencement of (the chapter on) partition, says: "If the father be lost, or no longer a householder, or his temporal affections be extinct." "Lost" means degraded; "no longer a householder" signifies, having quitted the order of a householder.

10. Therefore the son's right to the father's estate accrues when the father's right of property is destroyed by death, degradation, or adoption of an order other than that of the householder; and when his temporal affections are extinct, that is, even though the right of property remain, if the father be devoid of wish for the wealth belonging to him.

11. Here destruction of the right of property by reason of degradation is to be understood (to take place) on disinclination to expiation, because the capacity for atonement, which can be performed with one's own wealth only, is predicated in the Srutis, even of the degraded.

12. By the extinction of desires is meant, the cessation of desires which is not identical with that temporary absence of desires, which may co-exist with the right of property.

13. Here it should be remarked that the right of property, being once extinguished by reason of the

cessation of desires, will not again revive with the revival of desires.

14. Hence, because in the text of Devala (§ 8) it is affirmed that the son's right to the father's property does not arise while the father is alive, therefore the text of Gáutama which says that—"Property is taken by reason of ownership through birth alone :—this is said by the sages,"—is to be interpreted thus :—because immediately after the extinction of the father's right, the son's right is generated through birth, consequently by reason of ownership the son takes the property of his father ; not however immediately after birth, while the father's right remains.

15. In the text of Nárada which is first quoted, (§4) the terms "father" and "son" indicate any relatives. Accordingly Yájnavalkya, having premised Partition of Heritage, says :—" The wife and the daughters, also, both parents brothers likewise and their sons, gentiles, cognates, and a pupil and a fellowstudent : on failure of (each) preceding among these, each next in order is heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all classes.—From what follows, it appears that the word "each" is understood before the term "preceding."

16. Consequently the term Heritage is used by usage to signify that wealth in which right of property of the owner's kindred, dependant on relation of sonship &c. to the owner, arises on cessation of his right.

17. The phrase,—"dependant on relation of sonship &c." is inserted (in the above definition) to distinguish that right which is dependant on purchase. The phrase " on cessation of his right" excludes the wife's right to

her husband's property, contemporaneous with the husband's right.

18. Some,*allege that Partition which takes place by reason of the co-existence of other relatives (who have an equal right of succession) is a particular ascertainment of the right of property, or making of it known, which has arisen in lands, gold &c., and which extends to a part only, but which is unfit for special use and appropriation because grounds of discrimination are wanting, by casting of lots or otherwise which determine that a particular chattel belongs to a particular person.

19. But this (definition) is not accurate. For how may it be certainly known, since no text declares it, that the lot for each person falls precisely on that article which was already his.

20. Again if wealth be gained after the father's demise, by a brother riding one of two horses, which belonged to the father, it is universely acknowleged, that two shares of it appertain to the acquirer; and one to any other coheir. In such a case when the original property is subsequently divided, if that very horse be obtained by the acquirer, then according to the opinion of those who affirm partial rights, the horse was already his; why then should another brother share the wealth gained by him? But if the horse be obtained by another, equal participation (by the two co-heirs only) of wealth so acquired would be proper, since it is gained by the personal labor of the one and by the work of a horse belonging to the other.

* The allegation is made by the author of the Dáyabhága.

21. But in fact, Partition is the adjustment by lot or otherwise into right over a specific portion, of that right which did, by reason of the sameness of relation of the co-heirs, accrue to the whole property, upon the extinction of the right of the previous owner.

22. Thus, even the accrual and extinction of rights over the entire estate are to be admitted, in the same manner, as in the case of the re-union of co-heirs, the destruction of rights over portions, and the production of rights over the entire estate, are acknowleged.

23. This too is (in a manner) acknowledged by the author of the Dáyabhága who himself writes:—In the following text of Vrihaspati, namely,—"He who being (once) separated dwells again through affection, with his father, brother, or paternal uncle is termed reunited;"—because the father, the brother, the paternal uncle and the like, are from their birth likely to be united as regards the property acquired by the father or the grandfather; they alone may become re-united, when being once separated they annul, through mutual affection, the previous partition with the agreement to this effect, that the wealth which is thine is mine, and what is mine is thine, and remain like one householder in any transaction. But not an association of merchants who, unlike the coparceners, are by the mere union of stocks formed into a partnership, nor the mere union of estate of separated coparceners without the stipulation based upon affection (are to be looked upon as instances of re-union.)

24. By reason of the right being common, the text of Kátyáyana, which says,—"A coparcener is not liable for the use of any article which belongs to all the undivided

relatives,"—becomes consistent in its literal sense; inasmuch as his own right extends over every article; accordingly, there can be no theft in such a case, as will be shewn hereafter. (chap. viii.)

25. Similarly also, by the text of Nárada, namely,—"Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts and accept presents,"—the prohibition of mutual gift &c. amongst undivided coparceners becomes logically consistent; because, (in such a case) there is an impossibility of gift and acceptance, inasmuch as the acceptor, had a right to the property given, even before a gift of it was made. The text is to be understood in this way, in the cases of bearing testimony and becoming sureties.

26. All the coparceners are entitled to the fruits of all acts, either temporal or spiritual, which are performed with the use of the joint property; since their right is common. This is affirmed by Nárada,—"Among undivided brethren, religious duties continue common; but when partition takes place, their religious duties also become different."

27. Vyása ordains: "Let no one without the consent of the others, make a sale or gift of the whole immoveable estate, nor of what is common to the family. Here, from the use of the adjective "whole," it appears that the right of each parcener accrues to the entire estate.

28. Therefore, when there are two persons equally related to the deceased, each of them considers the property left by the deceased to belong to himself as well as to the other co-heir. Gift and the like by the one for

his own purpose, is prohibited, should the other's consent be wanting.

29. Therefore it is established that the right does not accrue to a fractional portion.

30. Vrihaspati lays down a special rule with regard to the allotment of shares :—"All the sons take equal shares of the property of their father; but of these he who is learned and virtuous deserves a larger share; Since a person becomes father by that son who has in the world acquired a fame in literature, science, heroism, acquisition of wealth, knowledge of theology, charity, and commerce."

31. Vrihaspati also speaks of partition by use at successive periods :—"A single female slave should be employed on labor in the house (of the several co-heirs) successively according to the number of shares."

32. Here there is clearly the supposition either of the production and the destruction of different temporary rights of a single person over a single individual; or of the temporary cessation of different rights of all.

33. A text of Kátyáyana cited in theKalpataru and the Ratnákara declares that (the law of) partition may be different in different places and the like :—"Partition of Heritage is to be regulated by the law which may obtain in a country, among a class, among an association (of persons such as those carrying on a particular trade, or practising a particular mechanical art), and in a village: Bhrigu (has ordained this)." "Has ordained this" is understood.

CHAPTER II.

PARTITION MADE BY THE FATHER.

1. In the next place (is discussed) the distribution made by the father. (On this subject) Háríta (says),—"A father during his life may, after distributing his property, retire to the forest, or enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments and keeping a greater portion: should he become indigent, he may take back from them." "The order suitable to an aged man," intends, retirement or the order of Bhikshus or ascetics.

2. By this text, the father is authorized to distribute a small part, and to reserve the greatest portion of the wealth.

3. Vishnu (ordains),—"When a father separates his sons from himself, his own will regulates the distribution: but in the estate inherited from the grandfather, the ownership of the father and the son is equal."

4. As regards even his self-acquired property, the unequal distribution by his own will should be guided by such reasons as the existence or absence, of filial piety, of large family, of inability, and of the like, (of any son.) This is affirmed by Kátyáyana,—"But let not a father distinguish one son at a partition made in his lifetime, nor capriciously exclude one from participation without sufficient cause."

5. But when there are none of the reasons enumerated above (a father may not make an unequal distribution.) This is declared by Nárada,—"A father who is afflicted with disease or influenced by wrath, or

whose mind is engrossed by a beloved object, or who acts otherwise than the Sástras permit, has no power in the distribution of the estate." "Beloved object," intends, the son of a wife on whom he dotes, and the like.

6. But should the sons themselves request partition, in that case, Manu declares the absence of unequal allotment,—"If the undivided brethren do, with one accord, desire partition, then the father shall, on no account, make an unequal distribution."

7. The father, if unwilling, shall not share with his sons his paternal property, which was seized by strangers, but which he recovered. This is ordained by Manu and Vishnu,—"If the father recovers paternal wealth (seized by strangers and) not recovered (by other sharers nor by his own father), he shall not, unless willing, share the same with his sons,—it was acquired by himself." The construction is, that he shall not share it with his sons, because it was, as it were, acquired by himself.

8. But as regards the case of recovery by any other (than the father), the law is propounded by the text of Sankha which is hereafter cited: (§ 11). This follows from the logical interpretation of two provisions, one of which is general and the other special.

9. This however refers to immovable property.

10. But in gems and the like, though not recovered by him, the father alone has ownership, as Yájnavalkya intimates,—"The father is master of all the gems, pearls and corals without exception: but neither the father nor the grandfather is so, of the

whole immovable property," Since "the grandfather" is here mentioned, the text must relate to his wealth.

11. In like manner, the following text of Sankha refers to a case of recovery by brothers and the like,—"When one parcenar alone, by his exertion, recovers land which was lost before, the others take in proportion to their shares, after setting apart a fourth for him."

12. Here the recoverer should, after appropriating a fourth share for himself, take an equal share of the remainder with his brethren, otherwise the shares might become inequitable.

13. When the father effects the distribution, he should allot to his sonless wife a share equal to that of a son, because Vyása declares,—"But the father's wives, who are without male issue, are declared to be entitled to equal shares with his sons; and all the grandmothers are declared to be equal to mothers."

14. This rule applies when Strídhana has not been bestowed. This is affirmed by Yájnavalkya,—"When the father (by his own choice) makes all his sons partakers of equal shares, his wives, to whom Strídhana has not been given by their husband or father-in-law, must be made participants of shares equal to those of sons."

15. In order to the consistency of the texts of Vyása and Yájnavalkya, the phrase "father's wives" in the text of the former (§ 13) is to be construed, "when the father distributes his property, his wives."

16. Nor can it be said that the converse is the case here; because the logical rule of interpretation is, that

"When a provision of law is clear in itself, it should not be controlled by any other."

17. Therefore in a case of partition made by the sons, the step-mothers (without male issue) are not entitled to any shares.

18. When Strídhana has been given, the husband should allot to his wife half the share of a son. This appears to be the law (from the combined effect of the following texts of Yájnavalkya and Baudháyana); for Yájnavalkya observes in a case of marriage,—"To a woman, whose husband marries a second time, let him give her an equal sum, (as compensation) for the supercession, provided no separate property have been bestowed on her: but if any have been assigned, let him allot half (the share of a son)"; and Baudháyana says,—"What is affirmed of even one among many who have a common property, the same is to be extended to every one, since they are considered similar."

19. When partition is made, by the grandsons, of the property of their grandfather, a share ought to be allotted to the grandmother, in the same manner as a share is given to the mother (when paternal property is divided.)

20. Vishnu says,—"But in the property left by the grandfather, the father and the son have equal ownership." Also Yájnavalkya ordains,—"The ownership of the father and the son is the same in land or in a corrody or in chattels which were acquired by the grandfather." The author of the Kalpataru defines 'a corrody' to be, what is granted by the king and the like, receivable periodically from a mine or similar fund:

'chattels' from their association (with land) here means biped (i. e. slave); because another text affirms,—" Although immoveables and bipeds have been acquired by a man himself, a gift or sale of them should not be made by him without the consent of all the sons."

21. According to these texts, in regard to the land or a corrody or slaves acquired by the grandfather, as the father has right over these by reason of his being the person who presents oblations at solemn obsequies, so if his right cease by death or other cause, his sons have a right, notwithstanding their uncle, to so much, as should have been their father's share.

22. For the same reason the text of Kátyáyana quoted in the Ratnákara declares,—" If an unseparated son dies, his son should be made participant of his father's share; he, who has not received maintenance from the grandfather, is entitled to get his father's share from his uncle or uncle's son."

23. During the lifetime of the father, the grandsons are not entitled to any share, inasmuch as they are then incapable of presenting funeral oblations to the grandfather.

24. Similarly on the extinction of the right of the proprietor's grandson, his great-grandsons become participator's of his (the grandson's) share only. But they get no share during the grandson's lifetime.

25. Or the above texts may admit of the following interpretation, namely, that as the father is at full liberty to allot unequal shares, when he is distributing his self-acquired property: the same is not the case here (i. e. when distributing his paternal estate.)

26. But these texts do not intend equal ownership of the father and the son. Because two shares of the father are declared by the following text of Nárada—"Let the father making a partition reserve two shares for himself: when her husband is dead, the mother is entitled to an equal share with her sons."

27. Nor can this refer to the self-acquired property of the father; because as to that the unlimited discretion of the father declared by Vishnu in the text,—"His will regulates the division of his self-acquired property,"—ought not to be restricted to two shares; also because it would be contradictory to the text of Háríta which ordains,—"He may remain at home keeping the greater portion to himself."

28. But the text of Nárada (§ 26) refers to the property of the grandfather and other ancestors.

29. Also the following text, cited in the Mitákshará, refers to the property left by the grandfather,—"By favour of the father apparels and ornaments are used: but immovable property may not be consumed (even) with the father's indulgence"—because the self-acquired immoveable property, granted by the father, may, of course, be consumed (by the sons); otherwise an objection would arise in the shape of an inference of a different radical revelation.*

* The meaning is this. The text viz., "But immovable property may not be consumed even with the fathers's indulgence" refers to the grand-father's property, and not to the self-acquired property of the father. For the father's unlimited authority over his self-acquired property is declared by innumerable texts. Consequently there is no reason, why the son might not consume the father's self-acquired property even with his indulgence. If it be argued that this text itself intends to put a restriction to the unlimited power of the father over his self acquired property in that case an objection would arise, in the shape of an inference of an opposite revelation. This objection cannot be comprehended unless the following doctrine of Hindu revelation be taken into con-

30. Vrihaspati declares that the distribution of an estate left by the grandfather or other ancestor takes place only when the mother is past childbearing,—" On the demise of both parents, participation among brothers is allowed; and even while they are both living, it is right, if the mother be past childbearing." Here the term mother includes also a stepmother; because of the parity of reason, namely, the probability of the birth of other sons.

31. Because it is affirmed that "if the mother be past childbearing," therefore the text refers to the property left by the grandfather, but not to the estate of the father; for as to this, provision is made for the share of one who is born after partition. As Vrihaspati declares,—" The younger brothers of those, who have made a partition with their father, whether children of the same mother or of her rivals, shall take their father's share. A son born before partition has no claim on the paternal wealth; nor one begotten after it, on that of his brother. As in the property, so in the

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sideration. The Hindus believe that their law is based upon revelations which were not recorded by the sages who were inspired therewith. But they handed down these to their disciples who traditionally remembered the purport, but not the letter of these revelations. The sense of these revelations was, by the remembering sages expressed in their own language which was recorded. Hence Hindu law bears the designation of Smriti which signifies "what is remembered." Therefore the subsequent Hindu writers classify their revelations under two heads namely the direct and the inferential. By the direct are included the four Vedas consisting of the Mantra and the Brahmana, and the Upanishads. Under the inferential are comprised those that are deduced from Smriti or the texts of Hindu law, and from the customs and usages which are observed from time immemorial, by the learned world, but which are not expressly prohibited.

Now, if the argument that a restriction was intended by the above text to be placed upon the unlimited authority of the father over his self-acquired property be correct, then a revelation is to be inferred to the following effect; that a person has not unlimited authority over his self-acquired estate. But from the texts, which lay down that a person has an absolute right of disposal over his self-acquired property, a contradictory revelation necessarily follows. This would be absurd. Therefore the interpretation put by the author upon the above text is perfectly consistent. TRANSLATOR.

debts likewise, and in gifts, pledges, and purchases, they have no claim on each other, except for acts of mourning and libations of water." "Begotten after partition," signifies, one that is conceived after partition.

32. Yájnavalkya says,—"When the father makes a partition, let him separate his sons (from himself) at his pleasure; and either (dismiss) the eldest son with the best share, or (if he chooses) all may be equal sharers." In this text, the phrase "at his pleasure," refers to self-acquired property: "with the best share," means, a share joined to the twentieth part set apart for the eldest; the best and equal shares refer to the grandfather's estate; for, thus it would be consistent with the proposition which is first laid down.

33. Likewise, the following text of Gotama refers to the estate of the grandfather, because it says,— "if the mother be past childbearing,"—"After the demise of the father, let the sons share his estate: or when he is alive, if the mother be past childbearing, and he desire partition."

34. Therefore also, because death of the father is indicated by the phrase 'after the father', and because the desire of the father alone is expressed by the passage,— "while he is alive if he desire partition,"—consequently it is established that the distribution of the grandfather's estate may take place at the desire of the father and not at that of the sons.

35. Likewise, the text of Devala which says,—"They have no ownership while the father is alive and free from defect,"—and the text of Baudháyana which declares,— "Partition takes place by permission of the father,"—are

without distinction applicable as well to the father's property as to the estate left by the grandfather.

36. Should however the estate of the grandfather be accidentally distributed even before the mother is past child-bearing. (To meet that contingency) Vishnu says,—"Those to whom the father has allotted shares, should allow a share to one who is begotten after partition." This text does not refer to the property of the father, because in that case it would be inconsistent with the text of Vrihaspati cited before: (§ 31).

37. Referring to the twelve kinds of sons, Devalà says,—"All these sons of one destitute of true issue are held to be entitled to the inheritance: but should a true legitimate son be afterwards born, they have no right of primogeniture: such among them as are of equal class (with the father) shall have a third share as their allotment; but those of a lower tribe must live dependent on him, supplied with food and raiment." "Entitled to the inheritance," means entitled to a full share. Of these, other than the true sons, those that are of the same class with the father are entitled to a third share when there is a true son.

38. As to this again, Manu lays down, a particular rule,—"The legitimate son and the son of a wife participate in the property of the father (in the way specified above), and the ten remaining sons are successively entitled to a share of the property as well as to the membership of the family." By reason of his being the propagator of the family and the giver of the funeral oblation which is due to the proprietor, the son of an

appointed daughter in the first place, and after him the Dattaka son, becomes entitled to the inheritance and to the membership of the family. "Successively" (or in other words) in succession, that is, in the absence of the first of these, the next in order are entitled to the inheritance and to the membership of the family.

39. Yájnavalkya declares the participation by the son of a female slave of a Súdra,—"Even a son, begotten by a Súdra on a female slave may take a share at the desire of the father; but if the father be dead, the brethren should make him partaker of half a share; one who has no brothers (begotten by the father on a wife) may inherit the whole property in the absence of the daughter's son." "At the desire" means, at the choice of the father; "a share" means, a share equal to that of other sons.

40. When however there is a daughter's son, he gets an equal share with the son of a female slave; and this is reasonable, because the one is begotten by a woman who is not wedded, and the other is a legitimate descendant.

41. Manu states the distribution (of property) between a true son and the issue of the wife begotten without due authority,—"If there be two sons, a legitimate one and the son of the wife, who are claimants through the same (person), each shall take the property which belonged to his father; and not the other." "Claimants through the same," means, claimants begotten on the same mother. The meaning is, let each receive the wealth of him from whose seed he sprung; and let not the other who sprung from the seed of another person take it.

42. As regards also the woman's property, let the son of each father take that which was bestowed on her by his father; and not the other. Accordingly, Nárada says,—"If two sons begotten by two fathers, contend for the wealth of the woman, let each of them take that which was his father's; and not the other."

CHAPTER III.

PARTITION BY BROTHERS.

1. Partition by brothers after the demise of the father is next explained. On this Devala says,—"Let the sons divide the father's estate on the demise of the father." "The father's estate" signifies, the property inherited from the father. Nárada says,—"Whatever remains after the father's gifts are given, and his debts liquidated, should be divided by the sons, so that the father might not remain a debtor." 'The father's gifts' signify what the father promised to give. It appears from the passage 'that the father might not remain a debtor,' that in case of inability (to liquidate the father's debts at the time of partition) it ought to be acknowledged before the creditors that the debts shall be paid off after partition.

2. Here (it should be remarked that) while the mother is alive, partition by uterine brothers is not compatible with moral duty; as is intimated by Sankha and Likhita,—"Since inheritance is the basis of the family, the sons are not independent while their father is alive, also while their mother is in a similar predicament." For

the same reason Vyása says,—"For brothers a common abode is ordained, so long as both parents are alive ; but religious merit of them, if separated after their decease, increases." The meaning is, because a separated brother performs the ceremonies enjoined by the Vedas with the wealth appertaining to himself alone, consequently there is an increase of religious merit of that one alone.

3. If however (the paternal property) be distributed (while the mother is alive,) then the mother is entitled to participation. This is declared by Kátyáyana,—"On the demise of the father, the mother too partakes of an equal share with the sons."

4. Participation of an equal share too is only when the mother has not got woman's property (Strídhana) but if she has, a half share is to be allotted to her. This follows from the text cited before (Ch II, § 17).

5. Vrihaspati describes two modes of partition either with or without specific deductions (of a twentieth part for the eldest, and so forth),—"For co-heirs two modes of partition are ordained : one in the order of seniority of age, and the other by allotment of equal shares." The phrase 'in the order of seniority of age' intends, specific deductions.

6. But the absence of specific deductions among the Súdra class, will be hereafter mentioned.

7. Although equal division is in conformity with the Sástras, still the alternative of specific deductions, taking place out of an excess of reverence towards the seniors in age, is not contradictory, in the same manner as partition or non-partition is optional (with the co-heirs).

8. On this Manu says,—"But the eldest alone may take the paternal estate in its entirety : and the rest may remain dependent on him, as they did on the father." Also Nárada says,—"Or the eldest brother may, like the father, support all the others, if they be willing ; or even the youngest brother, if capable (may do so) : for rank in a family is proportional to ability." The middlemost of course may be here inferred from the analogy of the staff and cake.

9. This analogy is as follows : to gnaw the staff was difficult for the rat ; but if that was accomplished, the eating of the cake which was attached to it is inferred, because it is the easier ; so, in other cases, according to their circumstances, if one of associated things be true the other may be rightly inferred.

10. Consequently as there is no distinction, Nárada says,—"He, who being engaged in the management of the family, performs its business, should be honoured by the brothers with (presents such as) food, apparel and conveyances."

11. Vyása praises one who acts in that way,—"During whose life Bráhmanas, friends and relatives gain their maintenance, his life is fruitful : for, who does not live for his own sake ?"

12. In Harivansa, Nárada addressing Indra describes the evils springing from a contrary conduct,—"O, Destroyer of Bala ! mutual disagreement among brothers and friends causes only the delight of enemies : in this no doubt (can exist.)"

13. Here (it is to be remarked that) Nárada declares a common abode by the consent of all (the co-heirs).

14. But partition is not so. This is indicated by Kátyáyana, who, after having commenced, (the subject of) partition, says,—"The wealth of those that have not attained to maturity, as also of those that have gone to a distant place, should without expense be entrusted to the relatives, who are friendly disposed to them." "Those that have not attained to maturity," means, the minors.

15. If one of the co-heirs by reason of his own ability, decline to take his share of the property inherited from the father or other ancestor, something should be given to him, be it only a *Prastha* of rice, on his separation, for the purpose of obviating denial in future, on the part of his son or other heir. This is ordained by Manu,—"If any one of the brethren has a competence from his own occupation, and desires not the property, he may be debarred from his share, by giving him some trifle in lieu of maintenance."

16. Kátyáyana says,—"The visible objects such as a house, a field and a quadruped should be distributed : on suspicion of some hidden property, some test is ordained." "Test" signifies, divine test (such as ordeals by the balance and the like).

17. This text is rendered clear (by the following text),—"Bhrigu declared, that visible objects such as household furniture, conveyances, those (quadrupeds), that are milched, ornaments and workmen should be distributed: on suspicion of some hidden treasure,

resort must be had to *kosha.*" "Household furniture," means the pestle and the like; "workmen" indicates, slaves; *kosha* signifies, a particular ordeal, and its meaning is to be found in the Divya-Tattwa (*i. e.* the author's treatise on the ordeals); the rest is well known,*

18. Nárada says,—"For those, whose forms of initiation have not been, in the prescribed order, performed by the father, these ceremonies must he completed with their paternal property. But, if no wealth of the father exists, the ceremonies must, without fail, be performed by the brothers already initiated, contributing funds out of their own portions."

19. To the daughters however property sufficient to defray the expenses of marriage should be given, as is said by Devala,—"Wealth sufficient for marriage should be allotted to the daughters out of the estate of the father. And the legitimate daughter of one without male issue is, like the sons, entitled to the heritage." Vishnu says,—"But of maiden daughters the ceremony of marriage should be performed, according to one's own wealth."

20. Thus, the texts also, which ordain the allotment of a fourth share (to a maiden daughter), are to be construed to signify the allotment of property sufficient for marriage.

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* The divine tests are described also in the Mitákshará, Vyavahára Section, Chapter VIII. The following text of the Mitákshará in which the term *kosha* occurs, enumerates the divine tests: तुलाग्न्यापो विषं कोशो दिव्यानीह विशुद्धये ।

Mr. Macnaughten translates this text in the following way: The balance, water, fire, poison and sacred libation are the divine tests for purgation (or the removal of suspicion in a doubtful matter.) Here the term *kosha* is rendered "sacred libation," which signifies the water in which the idol worshipped by the person whose truthfulness is to be tested, is bathed; the person is then ordered to drink a portion of that water.

21. The following text of law cited in the Dwaita-nirnaya declares that the ceremonies of marriage may be performed even by relatives other than the father,—"Let the father himself or any other in his absence, according to the (recognized) order, perform the eight initiatory ceremonies such as that relating to conception and the like."

CHAPTER IV.

EXCLUSION FROM INHERITANCE.

1. In the next place, those that are excluded from inheritance (are determined.) A'pastamba says,—"All co-heirs who are indued with virtue are entitled to the property. But he who dissipates his wealth by vices, should be debarred from participation, even though he be the first born." The meaning is, even though he be the first born son.

2. The same opinion is propounded by Vrihaspati who says,—"Though born of a woman of equal class, a son destitute of virtue is unworthy of the peternal wealth : it is declared to belong to such kinsmen as are versed in the Vedas and as offer *pinda* to him (or them). "Offering *pinda* to him" means, offering funeral oblations to the owner; therefore is said "versed in the Vedas;" "destitute of virtue" means having defects inconsistent with virtue. In the Ratnákara the last line of the text of Vrihaspati is explained as follows,—"as offer *pinda* to them," mean, "as accord food and raiment to those destitute of virtue." In this view too, it appears as a matter of course, that the funeral oblations are offered to the owner.

3. "As a man passing over water on a bad raft, sinks, so a person with a bad son becomes immersed in the deepest darkness."

4. Kátyáyana says ;—"Property is created for (the performance of) religious ceremonies ; therefore property should be entrusted to persons who are worthy of property, and not to women, to the ignorant, and to the vicious."

5. The term "women" in the above text signifies female Sapindas other than the owner's wife and the other women, with regard to whose succession, there are special provisions.

6. Also,—"A son who is devoid of science, heroism, and the like, who is destitute of devotion and charity, and who is wanting in (religious) observances, is similar to urine and excrement."

7. Sankha says,—"He who takes the property of the deceased without performing the funeral obsequies, should without fail perform the expiatory rite, which is ordained for the different castes in atonement of murder."

8. Devala declares,—"When the father is dead, an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the badge (of religious mendicity), are not competent to share the heritage. Food and raiment should be given to them excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their father's share of the inheritance."

"An idiot" is one incapable of performing religious duty; "a blind" signifies one who is born blind, by reason of the text of Manu which says,—"Likewise those that are deaf and blind from their birth;" "a person wearing the badge" is one who had assumed hypocritical mark of austerity.

9. Nárada ordains,—"An enemy to his father, an outcast, an impotent person, and one who is addicted to vice (or has been expelled from society) take no share of the inheritance, even though they be legitimate; much less, if they be sons of the wife." "An enemy to his father" is one who abuses him by beating and the like while he is alive, and who is unwilling to perform his funeral obsequies when he is dead. The term of which the translation is "one who is addicted to vice" literally signifies, one stained with sins. But the author of the Kalpataru reads it as *apapátrita*, and explains it to mean one who is excommunicated by his relatives, on account of heinous crimes, such as murdering the king and so forth. The author of the Prakása, having read it as *Upapátaki*, expounds it as signifying one who has committed minor sins.

CHAPTER V.

EFFECTS LIABLE OR NOT LIABLE TO PARTITION.

1. In the next place are discussed partibility and impartibility. On this Vyása says,—"What a man acquires by his own ability, without relying on the patrimony, he shall not give up to the coheirs, nor that which is acquired by science."

2. Kátyáyana describes the wealth acquired by science,—"What is gained through learning, by the solution (of a difficulty) after a prize has been offered, must be considered as acquired through science, and is not distributed (among coheirs.) What has been obtained from a pupil, or by officiating as a priest, or for (answering) a question, or for determination of a doubtful point, or through display of knowledge, or by (success in) disputation, or for superior (skill in) reading, the sages have declared to be the gains of science, and not subject to distribution. The same rule likewise prevails in the arts. The excess of price (of the common goods) over the current one, and that which is gained through skill by winning from another a stake at play, must be considered as 'acquired by science,' and not liable to partition. So Vrihaspati has ordained."

3. The author of the Dáyabhága makes the following explanatory comments on this text :—"If you solve this well, I will give you so much money ;" after such an offer, if one solves the difficulty, and obtains the prize, it is not subject to distribution : "From a pupil," from a person instructed by the acquirer : "by officiating as a priest," received as a fee or gratuity from a person employing him

to officiate at a sacrifice ; these are fees not presents, for they are similar to wages : so a question relative to science being resolved, if any one through satisfaction, give anything which had not been previously offered : also what is obtained by clearing the doubts of one by whom an offer has been thus made,—"To him who removes my doubts on the meaning of this passage of the Sástras, I will give this gold" ; or it may signify a fee such as the sixth part or the like, received for a correct decision between two litigant parties, who apply for the determination of a dubious and contested point : likewise, what is received as a present and the like, for displaying his knowledge in the sacred ordinances and so forth : so in a contest between two persons, respecting their knowledge of sacred ordinances, or in any other controversy whatsoever concerning their respective attainments, what is gained by one surpassing the other : likewise where a single article is to be given, and there are many competitors, what is received for reading in a superior manner : also what is gained by painters, goldsmiths and other artists, through their skill in the arts and so forth : in like manner what is gained by beating another at gambling. All this is exempt from being shared by the rest of the coparceners. Therefore whatever is acquired by any (skill or) science, belongs to the acquirer, not to the rest. Only to show this, Kátyáyana has stated at large.

4. Nárada says,—"He who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science." From the singular number in the verb "maintains" it appears that if a person, by his own expense or bodily exertion, maintains

the family of his brother, while he is studying science (or art,) then he has a right to the property acquired through science (or art). "Ignorant" means, illiterate.

5. A text of Kátyáyana cited in the Kalpataru, in the Mitákshará, and in the Dípakaliká, says,—"Wealth gained through science, which was acquired from a stranger, while receiving a foreign maintenance, is termed acquisition through learning." "From a stranger" means, from one different from the families of the father and the mother.

6. On this (point) he again lays down a special rule,—"No part of the wealth which is gained by science, need be given by one versed in learning, to his unlearned coheirs, but such property must be yielded by him to those who are equal or superior in learning." The term "in learning," which occurs only once in the text, is to be construed with both; consequently a share is to be allowed to one equal in learning, and to one superior in learning, not to one inferior in learning, nor to one without learning. 'Versed in learning' means, learned.

7. Another special rule is laid down, (by the same sage),—"The property of brethren who have acquired learning from the family or the father, also that gained through heroism are liable to distribution. So Vrihaspati has ordained." Of this text the following explanation is given in the Kalpataru and the Ratnákara,—"That property, which is gained through knowledge and courage, by brethren who have acquired the learning (or skill) from the family, (that is to say) from his own family (or in other words) from the paternal grandfather, uncle and the like, or from the father, is subject to distribution."

8. Kátyáyana again ordains,—"The father is entitled to a moiety or a double share of a son's acquisition of wealth." "A son's acquisition of wealth" signifies, wealth acquired by a son. This follows from the following rule (of grammar), namely, "An affix to a verb, which transforms the verb into a verbal noun, some times bears the sense of a participle past passive."

9. The father's participation of a double share takes place when the acquisition is not made with the use of the paternal property, or when it is made with the use of a brother's property. The acquirer, however, takes a double share. But when the brothers' wealth is used, then each of them also takes a share, as is intimated by a text of Vyása, which will be hereafter quoted (§ 18). The father's participation of a moiety, however, takes place according to the Dáyabhága, when the father's property is used or when the father is endowed with excellences. When no other's property is used, then the father takes a double share, the acquirer also as such is entitled to two shares, the rest get nothing : but when a brother's wealth is used, he also takes a share. This is the explanation of the distinction between a double share and a moiety.

10. Kátyáyana again declares,—"The commons, the carriage road, clothes, and any thing that is worn on the body, should not be divided ; nor what is requisite for use or intended for arts : Vrihaspati has declared." "Requisite for use" is what is fit for each person's use, as books and the like, which should not be shared by the learned &c., with his ignorant co-heirs. The same explanation is given in the Dáyabhága, Madanapárijáta and others.

11. Yájnavalkya says,—"Whatever is given by the parents (to any child), let that become solely his property." The great Doctor Súlapáni (offers the following explanation),—"Whatever ornaments and the like are given to a son or daughter become exclusively his or hers."

12. Nárada says,—"Both what is gained by valour, and the wealth with a wife, as well as what is acquired by science these three (sorts of property) are exempt from partition; so also any favour conferred by the father.' "The wealth with a wife" signifies, the wealth received at the time of receiving the wife, that is, at the time of marriage: this meaning is indicated by the following text of Bharadwája,—"And what is received with the wife." If "excepting" be read, instead of "both" (in the text of Nárada), then the text "excepting these three *which* are exempt from partition," should be construed with "the rest shall be divided," which passage occurs in a preceding text (of Nárada.) Therefore (the meaning would be unchanged viz.) these three are exempt from partition.

13. When an object, which is bestowed as a favour, forms the subject of gift to two persons in succession, it becomes the property of the first donee. This follows from the following text of Yájnavalkya,—"In all disputes (concerning property) the posterior act prevails. But in cases of pledge, gift, or sale, the prior act predominates." Here the meaning is, that what prevails is valid.

14. In connection with this also, it is to be understood, that an act of pledge prevents the use of the property by the owner according to his own will; but it does

not cause the destruction of the owner's proprietory right. Therefore an act of pledge, whether prior or posterior, is controlled by the predominant acts of gift and sale, which are completed by the extinction of the previous owner's proprietory right.

15. To this effect is the following text of law cited in the Ratnákara and others,—"If after making a bailment or pledge, a pledge or sale be made, then the posterior act prevails." The construction is, that if after making a bailment a pledge be made (of the same thing), or if after making a pledge a sale be made, then the posterior act is valid. The term sale includes gift, by reason of the destruction of the previous owner's proprietory right (being similar in both cases.)

16. Thus also, if the pledge be not redeemed by reason of death or the like, of the seller or donor, it may be redeemed by the buyer or donee, because a right equal to that of the former owner has been generated by the sale or gift. In such a case if a dispute arise as to the title, then the buyer or the donee (who is admitted as such) is required to prove his (vendor's or donor's) possession and not the source of his title.

17. Sankha and Likhita declare,—"No division of a dwelling-house takes place; nor of water-pots, ornaments, and things not of general use; nor of women, clothes and channels for draining water. Prajápati has so ordained." If one of the co-heirs constructs a house or garden within the site of the dwelling place, and

another does the same in a different part, in that case what is constructed by each becomes his property. So in other cases also.

18. With regard to the property acquired (by one of the co-heirs) through the use of joint-stock, a special rule is propounded by Vyása,—"The brethren participate in that wealth which one of them gains by valor or the like, using any common property such as a weapon or vehicle: to him two shares should be given; but the rest should share alike." It should be observed that the term "brethren" in this text, includes also the uncle and the like. The following explanation is given in the Dáyabhága,—"If the joint stock be used by the acquirer, shares should be assigned to each coparcener in proportion to the amount of his share (in the joint stock), be it little or much, which has been used."

19. Nor should it be alleged that by the following text of Vyása one coparcener has no power to give, mortgage or sell any property,—"A single parcener may not, without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family: separated kinsmen as well as those who are unseparated are equal in respect of immovables; for, one has no power over the whole, to give, mortgage or sell it."

20. Because the right of property over the joint estate is not distinguishable from that over any other thing, and this right is nothing else but the capacity of dealing with the property according to pleasure.

21. The text of Vyása embodying a prohibition, however, is intended to show that a moral offence is committed, if, by an exercise of the right, the property be transferred to a person of bad character ; since the relatives would be troubled by such a proceeding :* and not that the sale and the like would be invalid. The above explanations (in §§ 19 to 21) are given in the Dáyabhága.

22. The author of the Vivádachintámani expounds the text of Vyása in the following way,—"When the co-heirs are separated, but the estate, instead of being distributed by metes and bounds, continues joint among them, then because their property is still common, one has not power (of dealing with the same). But when the shares are separated, then, of course, the exercise of the power by one, is valid."

But in fact the taking of permission after partition, is ordained for the purpose of obviating any doubt as to the property being divided or joint, and as to the boundaries and the like, in the same manner as the permission of the head of the village and of the like is taken.

23. Consequently the use of property without the sanction of the separated co-heirs, is valid.

24. The same doctrine is propounded in the Mitákshará by the following text,—"Land passes by six (formalities ;) by consent of towns-men, of kinsmen, of neighbours and of relatives, and by gift of gold and water." "Relatives," signify, daughter's son and the like (who are sprung from a different family ;) since, kinsmen *(jnatis)* are separately mentioned.

* The author of the Dáyabhága indicates the same principle on which the law of pre-emption is based.

25. "By gift of gold and water." Since the mere sale of immovables is forbidden by the following text of Devala,—"In regard to the immovable estate, sale is not allowed, it may be mortgaged by consent (of parties interested :)" and since donation is praised, in the following text,—"He who gives and he who accepts land, both of them perform a virtuous act and are certainly entitled to go the heaven :" therefore if a sale must be made, it should be conducted for the transfer of immovable property, in the form of a gift, delivering with it gold and water (to ratify the donation). This explanation is given by Vijnáneswara.

26. But in reality, the prohibition of the sale of immovables is in respect of joint estate. As regards even that, if support is impossible without sale, then when a sale must be made, it may, at the desire of the buyer, be conducted in the form of a gift, in order to obviate any dispute with the co-sharers.

27. Therefore the figurative predication of gift by Hárita in the following text,—"And what is given to a benefactor," refers to a (sale in the form of) gift to a benefactor who saves from distress (by paying the consideration).

As to gifts made to any other benefactor, Daksha states the religious merit arising from them,—"What is given to the mother and father, to a friend, to a disciple, to a benefactor, to the poor, to an orphan, and to the learned, becomes fruitful."

28. Therefore Nárada says,—"Should they give or sell their own share ; they may do all that they please ; for, they are masters of their own wealth."

29. Yájnavalkya says,—"He who recovers hereditary property which had been taken away, shall not give it up to the coparceners ; nor what has been gained by science." He who recovers, with the sanction of the other copartners, property inherited from the father or grandfather, which had been forcibly taken away by strangers shall not yield it to the other co-sharers.

20. Sankha lays down a special rule regarding land,—"Land (inherited in regular succession) which had been formerly lost, but which a single (heir) recovers solely by his own labour, the rest may divide according to their due allotment, having first given him a fourth part." In the Ratnákara it is affirmed that this text is not consonant to reason, because it is not cited in the Smritimahárnava Kámadhenu, Párijáta, and others. This is not (tenable), because it is quoted in the Dáyabhága, Mitákshará and the like.

31. In the Mitákshará a special rule is laid down regarding ancestral property which had been lost but recovered,—"Though immovables or bipeds (slaves) have been acquired (i. e. recovered,) by a man himself, a gift or sale of them should not be made unless convening all the sons ; they who are born and they who are yet unbegotten, and they who are actually in the womb, all require the means of support : the dissipation of their (heriditary source of) maintenance is censured."

32. To this an exception (is mentioned),—" Even a single (coparcener) may make a gift, bailment or sale of immovable estate at a time of danger, for the sake of the family, and specially for a religious purpose." "Bailment" signifies, mortgage.

33. Manu declares that gift, mortgage, or sale for the purpose of the family is valid even when made by a slave,—"Even the most dependant may make any transaction for the sake of the family; the master (remaining) either in his own country or a different one should not refuse his sanction." Kulluka Bhatta writes the following gloss on this text,—"While the master is in that place or in a different one, even a slave may contract debts and the like for the use of the family; the master should sanction the same."

34. Vrihaspati clearly ordains,—"The master of the house is liable to pay for what is taken for the sake of the family, by an uncle, a brothor, a son, a wife, a disciple, and a dependant."

35. Manu says,—"The coparceners though separated should, from their own (share), pay for what has been taken and expended for the purpose of the family, should the taker abscond." "From their own" signifies from their own property.

36. Kátyáyana declares,—"What is taken for the use of the family in time of need or disease, or by reason of distress, is known as done through danger, as also for the marriage of daughters, and what is done for the benefit of the departed; all this done by a relative is the master's due." The family must, at any rate, be supported. In this text, the genitive in the phrase "the master's due" signifies the agent, therefore the meaning is "should be paid for *by* the master." This explanation is given in the Ratnákara.

37. The following is extracted from the Dáya-bhága :—Háríta says,—"While the father lives, sons have no independent power in regard to the receipt, expenditure, and bailment of wealth. But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases." So Sankha and Likhita explicitly declare,—"If the father be incapable, let the eldest manage the affairs of the family, or with his consent a younger brother conversant with business. Partition of the wealth does not take place if the father be not desirous of it. When he is old, or his mental faculties are impaired, or his body is afflicted with a lasting disease, let the eldest like the father protect the goods of the rest, for (the support of) the family is founded on wealth. They are not independent while they have their father living, nor while the mother survives." These two passages forbidding partition when the father is incapable of business or when he labours under a lasting disorder, direct that the eldest son should superintend the household, or a younger son who is conversant with business.

38. Consent however may be inferred from the absence of prevention. This follows from a text of Kátyáyana cited in the Práyaschittavivek,—"When the master does dot prevent the gift of his own property by a co-sharer or even a stranger, then the gift is in effect, made by himself. This is ordained by Bhrigu."

39. To this effect is the following aphorism of the logicians, namely,—"The opinion of an opponent, if not contradicted, becomes admitted."

40. Thus, such a gift becomes valid, by reason of the absence of dissent.

CHAPTER VI.

ASCERTAINMENT OF A CONTESTED PARTITION.

1. The determination of a doubt regarding the fact of partition having been made, is next explained: Sankha ordains,—"Should a doubt arise on the subject of partition of the wealth of kindred, the family may give evidence, if the matter be not known to the relations sprung from the same race." "A doubt on the subject of partition of the wealth of kindred" intends, a doubt on the subject of partition of what is liable to be distributed among the kindred, i. e. a doubt regarding the fact of a partition having been made, or a doubt regarding the legality of a distribution which has already been made: "the family" *i. e.*, the cognates, and only in their default, a stranger may give evidence.

2. Vrihaspati describes a deed of partition,—"If the brethren who are separated, do, of their own accord, execute an instrument of distribution (at the time of separation): this (instrument) is called the deed of partition."

3. A text of Vrihaspati cited in the Vyavahára-mátriká declares,—"Should a village, a field and a garden be written in (conveyed by) a single instrument, all these become enjoyed by the possession of a single portion." "Instrument" signifies, a writing and the like.

4. But in the absence of enjoyment of even a single portion, there is a loss of the whole of what forms the subject of sale and the like. This is declared by the same (sage),—"Title to immovable property which is received at partition, or by purchase, or which is ancestral, or granted by the king, becomes completed

by enjoyment, but is lost through neglect (of enjoyment.) He who enjoys unmolested (the property) as soon as it is received, has his title completed, but loses it, if he neglects." What is received at partition, by purchase and the like, passes to the coparcener, to the vendee, and to the like, when followed by possession, but loss arises if enjoyment be neglected.

5. Nárada says,—"Gift and acceptance of gift, cattle, grain, house, field and attendants must be considered as distinct among separated brethren; as also diet, religious duties, income, and expenditure. Separated and not unseparated brethren may reciprocally bear testimony, become sureties, bestow gifts, and accept presents. Those by whom such matters are publicly transacted with their co-heirs may be known to be separate even without a deed of partition."

6. For the same reason Yájnavalkya says,—"Brethren, also husband and wife, likewise father and son, cannot, when not separated, bear testimony, become surety, or contract debt," i. e. reciprocally.

7. Although the absence of partition (between husband and wife) is indicated by A'pastamba,—"There is no partition between husband and wife; (and there is union) likewise in fruits of pure and impure acts"; also in discussing wife's right, her right is declared to extend during his lifetime to every property belonging to her husband; also in the Sráddha-viveka it is declared,—"That property lies between husband and wife," i. e. belongs to two masters, namely, husband and wife: still, husband and wife are enumerated in the above text of Yájnavalkya because it is ordained in the following text of the same sage, that when the father

distributes shares among his sons, he should allot one to a sonless wife,—"Should the father make his sons participators of equal shares, he should allot like shares to his wives."

8. "The wife and the son and the slave, these three are incapable of holding property." From the declaration of incapability of holding wealth as in this text, it is argued that the expression of the absence of partition (between husband and wife,) by A'pastamba, is to indicate the wife's right to every Vedic ceremony, she being an indispensable associate.

9. This argument is not tenable. Because in the latter half of the same text which runs as follows,—"What they acquire becomes his property, whose they are,"—is ordained the absence of independence of the wife and the rest, regarding even their self-acquired property without the permission of the husband and the like; also because there is a separate enumeration (of religious acts) in the latter part of the text of A'pastamba, viz.,—"(and there is union) likewise in the fruits of pure and impure acts."

10. Therefore, as the prohibition, namely,—"There is no partition between husband and wife"—implies that, but for it, partition might have taken place; consequently the common right of both over the same property is indicated.

11. Otherwise, in the absence of the common right of both, partition itself would be impossible; consequently, there would not have been the prohibitory proposition.

12. This is also the meaning of the unity (of husband and wife) declared in the Laghuháríta,—"Because she attains to unity (with her husband) through clarified butter, sacred text, burnt offering, and religious observances."

CHAPTER VII.

THE SHARE OF ONE WHO WAS ABSENT AT THE TIME OF PARTITION.

1. Allotment of a share to a relative returning after a long residence abroad, is now discussed. On this Vrihaspati declares,—"If a man leaving what is common to the family, reside in another country, his share must no doubt be given to his male descendant when he returns. Be the descendant third or fifth or seventh in degree, he shall receive his hereditary allotment on proof of his birth and name. To the lineal descendant, when he appears, of that man whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen. The enjoyment by strangers for three generations no doubt creates a title. The same is not true of descendants of the same family, until the discontinuance of Sapinda relationship. But a house, a field, a shop, and the like, belonging to a friend, a relative or a kindred, enjoyed by one who is not the owner, are not lost through that enjoyment. A thing enjoyed even for a long time by one related through marriage, by one versed in the Vedas, by the king or his minister, does not however become his property."

"Common to the family" signifies property which is common to the family ; "strangers" means those that are different from those that are descended from the family.

"One related through marriage" is the son-in-law.

These explanations are found in the Vivádachintámani.

2. Nárada says,—"That cannot be taken away which has been enjoyed though without title, by the three (ancestors) previous to the father, and which has descended in succession through three generations."

In this text "previous to the father" signifies three (ancestors) beginning with the father, by reason of the text which says,—"The fourth shall take."

3. Vyása distinguishes enjoyment,—"When the father, grandfather and great-grandfather are alive, the enjoyment by them during their joint lives is recognized as that of one generation."

Simultaneous enjoyment, though extending to a period of sixty years, is not tantamount to an enjoyment of three generations; since, as in that case only the great-grandfather is independent, the enjoyment is considered to be his. Then if it be asked what denomination does that enjoyment bear? This is answered by the passage "is considered that of one generation."

4. Vyása describes what is to be considered as an enjoyment of three generations,—"When the great-grandfather enjoys, and after him his son, and after them the father, then a person's enjoyment is said to extend to three generations."

5. As to the period to which the enjoyment of each should extend, Vyása declares,—"When the owner enjoys without obstruction for a period of twenty years, that enjoyment is said to extend to one generation; twice that period is called as extending to two generations, thrice that period, extending to three generations. In

such a case the origin of title it is not necessary to enquire."

Here "without obstruction" implies, in the presence of the opposite party.

The enjoyment for sixty years is in unison with what is expressed in this text ; therefore neglect for a longer period determines the right.

6. Vrihaspati too says,—"He who purchases land shall, when his right is contested, prove in a court of justice both his title and possession : but his son shall prove only (perfect) possession, his grandson or any other remoter descendant need prove nothing (but simple possession)."

7. Yájnavalkya ordains,—"He, by whom an acquisition of property is made, must when sued, recover the same (by evidence of title;) but neither his son nor grandson (need do the same;) for, in their case possession is the most essential (evidence.)

8. Kátyáyana describes the possession which is (legally) perfect (for the purpose of dispensing with the evidence of title),—"Possession is held to consist of five elements, namely, the source of right, long period, the absence of interruption, the absence of adverse claim, and the presence of the opposite party."

CHAPTER VIII.

PARTITION OF CONCEALED PROPERTY.

1. The distribution of that, which was concealed at the time of partition, but is afterwards discovered- (is now discussed). On this Kátyáyana says,—"If the father be deceased, let the sons meeting together divide, with their brethren, whatever was concealed by any of the co-heirs. Effects which are witheld by them from each other, and property which has been ill distributed, being subsequently discovered shall be distributed in equal shares. (So) Bhrigu (has ordained)."

Because the phrase "subsequently discovered" is inserted in the text, therefore without the discovery by means of human proof, of anything concealed, neither can a redistribution be made, nor can recourse be had to divine proof (or ordeal). Otherwise, there cannot be a perfect distribution in any case, if divine proof be not resorted to; since, through the influence of the witch Suspicion, some effects may be deemed to lie somewhere concealed. The phrase "ill distributed" shows redistribu, tion of what has been imperfectly distributed.

2. The following text of Manu, Nárada, Vrihaspati and Kátyáyana, refers to a case of perfect distribution,—"Only once may a distribution of shares take place, only once may a maiden be given (in marriage), only once may the same article be given (by an owner) : these three may occur but once."

3. Likewise the following text of Vrihaspati cited in the Ratnákara, namely,—"Whatever has been enjoyed by a co-heir as his share, shall not be interfered with : should he, who has signified his assent to a distribution, litigate

again, the king shall adjudge his own share to him, and shall punish him, if he persists in litigation" :—refers to an optional inequality in the shares, but not to an imperfect distribution caused by error and the like. This is indicated by the insertion, in the text, of the term "assent."

4. From the phrase "subsequently discovered" (§1) it appears that the distribution takes place of that alone (which is subsequently discovered) : but what has been once divided, need not be distributed again.

5. The phrase "in equal shares" is inserted (§1) with a view to obviate any such argument as that by reason of his concealment, no share or a small share should be allotted to him who withheld.

6. "Bhrigu" (§ 1) i. e. 'has ordained', to which the accusative is the meaning of the whole sentence.

7. Biswarúpa, Haláyudha and others offer the following explanation (of the text of Kátyáyana), namely,—Inasmuch as the distribution of what is subsequently discovered, follows from the very fact of there having been no distribution of it, the text (§ 1) was intended (by the sage) to show that the offence of theft is not committed in such a case.

8. What they intend is, that the import of the verb "to steal" is inapplicable to a case of concealment by a co-heir. Because it is clear from the term "another" in the text of Kátyáyana which says,—"Stealing is defined to be the taking of another's property,"—that the ownership of another must be exclusive of the

ownership of the taker. As for instance, if the Mudga be unavailable, then the Másha would be the substitute for it: consequently, the use of the Másha is prohibited by the text,—"The Másha is not fit for sacrifice." Here the prohibition refers to the thing composed of the constituent parts of the Másha alone, but not to that formed of the constituent parts of both the Másha and the Mudga. Similarly, in this case too, theft is committed by the taking of effects belonging to another exclusively, but not by the enjoyment of joint property which is common to himself and the others. Also because, of what is common and what is exclusive, what is exclusive is the sooner understood.

9. Consequently theft is committed by stealing property, distinctly knowing it to belong to another, and not by using another's property mistaking it for his own. This is the opinion of Jinendra and the authors of the Dáyabhága and the Práyaschitta-viveka.

10. Their assertion, that the appropriation of another's property by mistaking it for his own, is not theft, appears unsatisfactory, for it is at variance with the following story of Nriga in the Bhágabat,—"A cow belonging to a certain eminent priest, strayed into my herd of kine, and being confounded with them was given by me, ignorant of the circumstance, to a man of the sacerdotal order. The owner seeing her led away, claimed her for his own; and the other replied, she was mine by gift, Nriga gave her to me. The priests contending addressed me, setting forth their claims: You are the giver, said the one; the lawless taker, said the other. Hearing this, I was

confounded. For that sin I was transformed into a lizard, since which time I have seen myself, O Lord! in this degraded form."

11. But if many rings belonging to divers persons be mixed together, it is no theft if one sell another's ring by mistake for his own, in consequence of their similarity; for, they were placed together under the conviction, that, in the case of many articles which have no discriminative mark, as cowries and the like, belonging to different persons, being intermixed, no offence is committed if they are reciprocally used by a sort of barter: else a person would not do so under the apprehension of offence. But if through dishonesty anything is so placed for profit, then theft is committed.

12. The following passage of the Matsya-purána relates to a case like this,—"The man who, through ignorance makes a sale of another man's chattels, is faultless; but one that knowingly does so, merits punishment as a thief." This text intends that punishment shall not be inflicted upon one who does so through ignorance.

13. Therefore, theft is the disposal of property which is the subject of the exclusive right of another person, without such person's consent, and with the intention—"this is mine, and shall be disposed of according to my pleasure."

14. Sometimes it is mental, consisting of the intention only. In other instances it is corporeal, as an actual gift or sale or the like.

15. But such a theft is not possible in the case of the property of the undivided brothers and the like : for then it cannot be distinctly ascertained "this is mine and that is another's."

16. To the same effect is the following text of Kátyáyana,—"Effects which have been stolen by a coheir, he shall not be compelled by violence to restore. A coparcener cannot be made liable for the enjoyment of any article which belongs to all the undivided kinsmen." Here "stolen" is used metaphorically : he should be persuaded to restore by gentle means, but not by violence. Should an unseparated kinsman consume a greater portion, he shall not be required to refund the excess.

17. Thus also, there is no offence in taking a hidden treasure which is found ; for, it is a thing of which the owner is lost. So Manu declares,—"When the king finds a treasure he shall bestow half of it to Bráhmanas. But a learned Bráhmana (finding treasure) shall appropriate the whole of it, because he is the lord of all. If treasure is discovered by any other, the king takes a sixth of it. But a discoverer who gives no information to the king, and is detected, shall be bound to disgorge it to the king, and shall moreover be liable to punishment."

18. Such is not the case with associated traders : for, no text indicates it. On the contrary, it is directed by the following text of Yájnavalkya, that a fraudulent partner shall be dismissed without profit,—"Shall turn out a deceitful (partner) profitless." Traders have not, as in the case of inherited effects, a right vested in several persons with respect to the same chattel. But, by reason of intermixture their right of property in the goods is only uncertain.

CHAPTER IX.

STRIDHANA OR WOMAN'S PROPERTY.

1. Strídhana or woman's property is now described. On this Kátyáyana says,—"The wealth which is earned by mechanical arts, or which is received through affection from a stranger, is subject to her husband's dominion; the rest is pronounced to be the woman's property." What is received from a stranger, that is from a person not sprung from the family of her father, mother or husband, and what is earned by mechanical arts are subject to the husband's control. Hence though the goods be hers, they do not constitute woman's property, because she has not independent power over them. But a woman's right is complete in other descriptions of property, excepting these two; for she has the sole power of making gift or other alienation.

2. Manu and Vishnu declare,—"The heirs should not divide an ornament worn during her husband's lifetime: they are degraded if they partake of it.' Medhátithi explains this text in the following way:—An ornament or the like though not given by the husband, but put on with his sanction, becomes the property of the wife by that act alone.

3. Kátyáyana says,—"That which is received by a married woman or a maiden, in the house of her husband or father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women who have received such gifts is recognised in regard to that property: for it was given by the kindred for their maintenance and to soothe them. The power of women over the gifts of their affectionate kindred is declared

by all the sages, both in respect of donation and sale according to their pleasure." What is obtained from kind relatives of her father, mother or husband is called the gift of affectionate kindred. "To soothe them" that is, out of kindness towards them.

4. Nárada says,—"What has been given by the affectionate husband to his wife, she may, even while he is dead, consume or give it away according to her pleasure, excepting immovable property." From the adjective "given by the husband," it appears that mmovable property, other than that given by the husband, may of course be given away.

5. Otherwise, it would be contradictory to what Kátyáyana says, namely,--"according to her pleasure, even in immovables."

6. Kátyáyana cited in the Kalpataru and Ratnákara declares,—"She who is malicious, or shameless, or dissipator of wealth or adulterous is not entitled to woman's property."

7. Yájnavalkya says,—"A husband is not, if unwilling, bound to make good the property taken by him at a time of famine, or for the performance of a religious ceremony, or during illness or while under restraint." "Restraint" is, when the creditor and the like (forcibly) obstructs the preparation of food.

8. But (if taken) in any other circumstance, the following rule propounded by Kátyáyana is to be followed,—"Neither the husband, nor the son, nor the father, nor the brother, is entitled to the appropriation or disposal of woman's property."

CHAPTER X.

SUCCESSION TO WOMAN'S PROPERTY.

1. In the next place succession to woman's property is explained. On this Devala says,—"A woman's property is common to her sons and maiden daughters, when she is dead; but if she leave no issue, her husband shall take it, her mother her brother or her father."

2. Here equal right of sons and maiden daughters is indicated by the conjunctive compound (sons and maiden daughters).

3. In default of the one, the property goes to the other.

4. On failure of both of them, the succession devolves, with equal right, on the married daughter who has a son, and on her who is likely to have one, for they are capable of conferring spiritual benefits on their mother through the instrumentality of their sons who can present funeral oblations to the manes of their maternal grandfather, which are shared by the deceased. This is declared by Sátátapa,—"The mother partakes of whatever is, after the ceremony of Sapindíkarana, presented to the manes of the ancestors."

5. So also Nárada says,—"On failure of the son the daughter inherits : for she equally continues the lineage."

6. Consequently, on default of daughters of this description, succession devolves on the son's son.

7. On his default the property goes to the daughter's son, since the daughter's son is, in the following text of Manu, declared to be similar to a son's son,—"Also the

son of a daughter delivers him in the next world like the son of a son :" and since it is logically consistent ; for, the married daughter is debarred from inheritance by the son, therefore the son of the debarred daughter, should be excluded by the son of the person who bars her claim.

8. On his default, the son's grandson (succeeds), because he presents oblations which she (the deceased proprietor) partakes of.

9. On failure of these, the barren and the widowed daughters succeed to their mother's property ; since they too are her children.

10. On their default the property devolves on the husband.

11. This however does not refer to the property which was given by the parents ; for to that the brother succeeds (in preference to the husband.) To this effect is the following text of the senior Kátyáyana,—"Immovable property which has been given by the parents to their daughter, descends always to her brother, if she die without leaving issue."

12. But to the property received by the mother at the time of her marriage, the maiden and the married daughters succeed notwithstanding the sons, by reason of the text of Vasishtha which says,—"Let the females share the nuptial presents of their mother."

13. "A woman's separate property goes to her daughters, maiden and those not actually married." From this text of Gotama, it follows that the nuptial

presents descend first to the maiden, that is, unaffianced daughters ; in their default, to those daughters, that are affianced but not actually married : on failure of these, they appertain to the married daughters implied by the term "and" ; because it is first generally laid down, "A woman's property goes to her daughters," but the concluding portion namely "maiden and those not actually married," is intended to shew the order of succession.

14. Manu clearly says,—"Property given to the mother on her marriage (yautuka) is exclusively the share of her unmarried daughter." Here the word "yautuka" is derived from the verb "yu" signifying "to unite :" and the union of husband and wife arises from marriage, since this is indicated by the following sacred text (recited at the time of marriage),—"What is thy heart, let that become mine, and what is my heart let that become thine." The reading "Yautaka" is equally correct. The latter is adopted by Váchaspati-misra and Ráyamukuta.

15. The time of marriage means, time previous and posterior to the actual time of marriage. This is described in the Treatise on Marriage, to begin from the Sráddha for prosperity, and to end with the ceremony of prostrating before the husband.

16. As for the passage of Manu,—"The wealth of a woman which has been in any manner given to her by her father, let the Bráhmaní daughter take : or let it belong to her offspring :" since the text specifies "given by her father", the meaning must be that property which was given to her by her father, even at any time other

than that of the nuptials shall belong exclusively to her daughter ; and the term Bráhmaní signifies any daughter. Or, the text may signify that the Bráhmaní damsel being daughter of a contemporary wife, shall take the property of the Kshatriya and other wives dying childless, which had been given to them by their fathers. The precept, however, which directs that the property of a childless woman shall go to her surviving husband, does not here take effect.

17. On default of these, the son succeeds : since Manu says,—"On failure of daughters, the inheritance goes to sons."

18. Similarly also other texts declaring the succession of daughters previous to that of sons refer to this description of woman's property.

19. On failure of sons and the others, a woman's nuptial presents go to the husband, if the marriage ceremony was of any of the five forms beginning with the Bráhma : but if it was of any of the three forms begining with the A'sura, the property appertains to the mother ; and on her default, to the father.

20. As is declared by Manu,—"It is admitted that the property of a woman married by the ceremonies called Bráhma, Daiva, A'rsha, Gándharva and Prájápatya, shall go to her husband, if she die without issue. But her wealth given to her on marriage in the form called A'sura, or in either of the other two (Rákshasa and Paisácha) is ordained, on her death without issue, to bocome the property of her mother and father."

21. Baudháyana declares the order of succession to the property of a maiden,— "The wealth of a maiden, let the uterine brothers themselves take: on failure of them, it shall belong to the mother : or if she be dead, to the father."

22. Since, order is expressed in this text, therefore in the previous text (§ 20), "the mother and father" succeed in the order in which they are read, but not jointly, agreeably to the conjunctive compound.

23. Vrihaspati says,—The mother's sister, the wife of the maternal uncle, the wife of the paternal uncle, the father's sister, the mother-in-law, and the wife of an elder brother, are pronounced to be similar to the mother. If they have no issue of their body, nor son (of a rival wife) nor daughter's son, nor son of these persons, the sister's son and the rest shall take their property.

24. Both sons and daughters are included by the term "issue of the body:" by "son" is meant the son of a rival wife; for a passage of law declares,—"If among all the wives of the same husband, one brings forth a male child, Manu has declared them all, by means of that son, to become mothers of male issue." Nor is the term "son" meant to be in apposition with "the issue of the body;" for it would be superfluous, and the sister's son or any other remote heir would have the right of succession, although a son of a contemporary wife be living: "son of these persons" comprises the son's son and the rival wife's son's son, but not the son of a daughter's son; since he does not present oblations to the manes of her husband, which she partakes of.

25. Here agreeably to what has been said before, the rival wife's son and grandson succeed after the heirs down to the daughter's son. But it should not be asserted that they take, also on failure of the heirs beginning with husband and ending in father, mentioned before ; because the husband and the rest have no capacity to present oblations which are enjoyed by the deceased proprietress.

26. Therefore, on failure of the heirs down to the grandson of the rival wife, who are indicated by the term "nor" in the phrase "nor son of these persons," (§ 23) ; and also on failure of the heirs beginning with husband and ending in father, who are mentioned in the following text of Devala, namely,—"A woman's property, when she is dead, becomes the common inheritance of her sons and daughters ; in default of children, let her husband, mother, brother or father, take ;"—the succession to woman's property devolves on her sister's son, her husband's sister's son, her husband's brother's son, her brother's son, her son-in-law and her husband's younger brother, in preference to her father-in-law, her husband's elder brother and the like. Since, there is no other way of reconciling the texts.

27. On this subject, because the following text of Manu, in the Chapter on Inheritance, declares,—"To three ancestors must libation of water be given at their obsequies ; for three, is funeral oblation of food ordained ; the fourth is the giver of these oblations ; but the fifth has no concern in them ;" and Yájnavalkya declares,—"Among these the giver of oblations is the heir ;" and in the text of Vrihaspati (§ 23) the sonship of the sister's son and the rest, is indicated by the passage, "are pronounced similar to the mother :"

28. And because the only reason for setting out in the Chapter on Inheritance, the capacity of presenting oblations, is, to show that the preference as regards succession, depends on the capacity of conferring a greater amount of spiritual benefit, on the deceased proprietor :

29. And because Sátátapa ordains,—"A sister's son (should present oblations) to (the *manes* of) his maternal uncle, and a maternal uncle, to his sister's son ; and Pinda should also be offered to the father-in-law, to the spiritual preceptor, to a friend, to the maternal grand-father, as well as to the wives of these persons, likewise to the mother's and the father's sister : this is a settled rule amongst those who are conversant with the Vedas :"

30. Therefore it must be admitted that the order of succession among these six (sister's son &c.) is regulated by the different degrees of benefit derived from their oblations; since, the order indicated by the sense is of greater weight than the order of reading. Otherwise, succession would devolve, last of all, on the younger brother of the husband, contrary to the opinion and practice of venerable persons.

31. Therefore, first of all, the husband's younger brother succeeds to the property of his elder brother's wife, because he is a Sapinda, also because he presents oblations to her and her husband, as well as to the three ancestors to whom her husband was bound to present oblations.

32. On his default, the sons of the husband's younger and elder brothers succeed ; because they are Sapindas,

and because they present oblations to her and her husband as well as to the two ancestors to whom her husband was bound to offer oblations.

33. On their default, the succession devolves on the sister's son ; because though he is not a Sapinda, still he presents oblations to her and three Pindas to her father and his two ancestors, to whom her son would have presented funeral oblations.

34. In his absence, the husband's sister's son succeeds; because he presents oblations to the three ancestors of her husband, which her husband would have offered, and because he presents oblations to her and her husband. He is postponed to the sister's son, because, they respectively occupy the places of the husband and the son, and because the husband is inferior to the son, hence it is reasonable that their superiority and inferiority should be similarly determined.

35. On his default, a woman's property goes to her brother's son, because he presents oblations to her, and to her two paternal ancestors beginning with the father, to whom her son would have presented oblations.

36. On his default, the son-in-law succeeds to the mother-in-law's wealth ; because he presents oblations to her and to her husband.

37. The succession devolves in the above order : the passage "sister's son &c." (§ 23) enumerates the heirs but not the order of succession.

38. On failure of these six, the father-in-law or the like succeeds, according to his proximity of Sapinda relationship.

39. It must not be supposed that the text "mother's sister &c." (§ 23) is applicable when there is a failure of the Sapindas: for, in this enumeration of heirs, the husband's younger brother, his son and the son of the husband's elder brother are included, but the husband's father and elder brother who are more proximate are omitted.

CHAPTER XI.

SUCCESSION TO THE ESTATE OF A MALE WHO LEAVES NO MALE ISSUE.

1. In the next place are determined the heirs to the estate of one, who leaves no male issue.

2. Yájnavalkya says,—The wife and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow-student: on failure of the first among these, the next in order is heir to the estate of one who departed for heaven, leaving no male issue. This rule extends to all classes.

3. Likewise Vishnu says,—The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on the daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them it descends to the brother's son; if none exist, it passes to the Sakulyas; in their default, it devolves on Bandhus; on failure of them, it goes to the pupil; on his default, it goes to the fellow-student; and for want of all these heirs, the property escheats to the king, excepting the wealth of a Bráhmana.

4. In the above texts, the term "male issue" indicates sons, grandsons and great-grandsons; because they equally present oblations in the Parva days.

5. Accordingly, in a text Baudháyana, after mentioning sons, grandsons and great-grandsons, says, "male issue of the body being left, the property must go to them."

6. That text runs as follows,—"The paternal great-grandfather the grandfather, and the father, the man himself, his brothers of the whole blood; his son grandson and great-grandson by a woman of the same tribe: all these partaking of undivided oblations are pronounced Sapindas. Those who share divided oblations are called Sakulyas. Male issue of the body being left, the property must go to them. On failure of Sapindas or near kindred, Sakulyas or remote kinsmen are heirs."

7. The meaning of the passage is this:—Since a person (when deceased) partakes of the funeral oblations presented to the three ancestors beginning with the father, through the union of oblations (effected by the ceremony called Sapindíkarana); and since the three descendants present oblations to the deceased; and since he, who, while living, presents an oblation to an ancestor, partakes, while deceased, of oblations presented to the same person, as participating in the offering at obsequies: therefore the middlemost (of the seven) who while living offered food to the manes of ancestors, and when dead, partook of offerings made to them, becomes the object to which the oblations of his descendants were addressed in their lifetime, and shares with them, when they are deceased, the food which must be offered by the

daughter's son and the like. Hence, those ancestors, to whom he presented oblations, and those descendants who presented oblations to him, partake of an undivided offering in the form of (*pinda*) food at obsequies. Persons, who do partake of such offerings, are Sapindas. But one distant in the fifth degree neither gives an oblation to the fifth in ascent, nor shares the offerings presented to his manes. So, the fifth in descent neither gives an oblation to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated Sakulyas, as partaking of divided oblations, inasmuch as they do not participate in the same offerings.

8. It has been before observed, that this relationship of Sapinda (extending no further than the fourth degree) as well as that of Sakulya, is propounded relatively to Inheritance. But relatively to Mourning, Marriage and the like, those too, that partake of the divided oblations, are denominated Sapindas. This has been explained in the Suddhitattwa.

9. Kátyáyana cited in the Ratnákara, clearly states the order of succession of the son and the like,—"If an undivided son dies, his son should be made a sharer of the inheritance. He, who has not received livelihood from his grandfather, shall take his paternal share from his uncle or his son. But only the same share of property belongs to all the brethren (descended from the son.) Likewise also his (grandson's) son shall take. Succession devolves not on a more remote descendant."

10. "Livelihood" means property sufficient for livelihood. The meaning of the text is as follows,— If any one of the brethren ceases to live, then his share should be allotted to his son ; if the deceased leaves more sons than one, then his share should be equally distributed to them : likewise his (grandson's) son shall take ; his (great-grandson's) son's share ceases.

11. This however relates to a case in which the sharers dwell together. As Devala declares,—"The rule is, that the redistribution of inheritance among unseparated or separated kinsmen who dwell together takes place down to the fourth descendant." The redistribution, taking place among separated brethern who dwell together or are re-united extends, as in the case of unseparated ones, to the brother or his son or grandson, but excludes his great-grandson who is the fourth in descent.

12. The allotment of shares to those who are even seventh in descent as has been said before, (however,) relates to those that return from a distant place. (Ch. VII.) Consequently no contradiction is incurred.

13. Therefore on failure of descendants down to the great-grandson, the widow succeeds to the estate (left by her husband.)

14. As is declared by Kátyáyana,—"The wife may, after the death of her husband, use the heritage of her husband according to her pleasure : but shall, while he is alive, preserve it or entrust it to his family. The sonless (widow) keeping unsullied the bed of her husband and persevering in religious observances, shall with

moderation, enjoy (the property of her husband.) After her, the heirs shall take." "According to her pleasure," intends, for the purposes of religion.

15. Likewise Vyása ordains,—"O sweetfaced ! a woman, who is always assiduous in the performance of religious observances, conveys (to a region of everlasting bliss) both herself and her husband abiding in another world."

16. A text of law cited in the Madanapárijáta is as follows,—"Whatever is most desirable in the world, and whatever was most liked by the husband, should be bestowed on a meritorious man, by a woman desirous of gratifying her (deceased) husband."

17. "Keeping unsullied the bed of her husband" intends, one who knows no other man than the husband. Accordingly, in that part of the Harivansa which treats of religious observances, it is said,—"O auspicious Arundhati ! of unchaste women, all good acts consisting of gift, fasting and merits, likewise all religious observances are fruitless."

18. Also Brihan-Manu says,—"Let the sonless wife, keeping unsullied the bed of her husband, and persevering in religious observances, offer his oblations and take (his) entire share." The term 'his' which occurs in the phrase "his oblations" is to be construed also with 'share'; and since the term 'his' denotes the husband, therefore the wife takes the entire share *i. e.*, the whole estate left by the husband, and not so much only as is sufficient for her subsistence.

19. By the term "wife' (*Patní*) is intended, the wife of the same class with the husband; since it is expressed (in several texts) that "the senior wife takes the wealth.)"

20. Seniority (among wives) is described by Manu, thus—" When regenerate men take wives both of their own class and others, the seniority, honour and apartment of those wives must be settled according to the order of their classes."

21. Nárada ordains mere maintenance of wives others than those of the same class,—"Of brothers if any one departs without issue, or enters into a religious order, let the rest divide his wealth excepting the wives' separate property. Let them allow a maintenance to the wives (*strí*) for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brethren may resume that allowance." 'Departs' means, dies.

22. Thus, as there is a distinction between a wife taken from the same class and one who is not so, texts like the following should be interpreted with reference to this distinction,—" Next let brothers of the whole blood or also equal daughters divide the heritage of him who leaves no male issue; or let the existing father, or brothers belonging to the same tribe, or the mother, or the wife, inherit in their order; but on failure of these, let the nearest of the kinsmen succeed." 'Equal' means, appertaining to the same class; 'existing' signifies, surviving.

23. In fact, however, the order mentioned in this text is not to be accepted in all cases ; since, that would be inconsistent with the text cited below, which bases the order of succession on the degrees of spiritual benefit, conferred upon the deceased proprietor. Hence it is that the terms 'or' and 'or also' are repeated in the text, on purpose to show that no importance is to be attached to the order.

24. On failure of the wife (*Patní*) the daughters (succeed.) Here by the plural number (§ 2) are included the maiden and the married daughters, also the daughter's son.

25. Now the order of succession among the maiden and the married daughters is indicated by the following text of Parásara,—" Let the maiden daughter of one who dies without leaving male issue, take the inheritance ; on failure of her, the married one."

26. In default of these, the daughters' son (inherits). Because in a text of Manu, namely,—" In this world there is no difference in law between a son's son and a daughter's son ; since, their father and mother both sprang from the body of the same man,"—the daughter's son is declared to be equivalent to the son's son, consequently as the son's son succeeds on failure of the sons, so the daughter's son inherits in default of the daughters.

27. Accordingly, Vishnu cited by Govindarája says,—" In a family destitute of sons and grandsons, the daughter's sons inherit the estate ; for the son's son and the daughter's son are alike in the performance of obsequies of the ancestors."

28. If there be no daughter's son, the parents (succeed). Of these, first, the father, and then the mother, succeeds, agreeably to the text of Vishnu, cited before, (§3).

29. In their default, the brothers (succeed.) Here too, the plural number is used (§ 2) for the purpose of showing that the succession is different according as the brothers are uterine (full), or consanguine, or re-united.

30. Hence, of an uterine brother and one born of the step-mother, though they are sprung from the same father, the uterine brother alone succeeds, but not the step-brother; because the former presents oblations to six ancestors which the deceased was bound to offer, but the latter offers oblations to the three paternal ancestors only.

30. According to the opinion of some, however, even a step-brother who is re-united equally succeeds to a brother's property, with an uterine brother. But if an uterine brother be re-united, he alone takes, and not a step-brother though re-united.

32. On this subject Yájnavalkya says,—(1) " A re-united brother shall keep the share of his re-united co-heir who is deceased; or shall deliver it to his issue. But an uterine brother shall thus retain or deliver the allotment of his uterine brother. (2) A half brother, however, being again associated, may take the heritage; not a half brother (who is not re-united) : or an (uterine brother) though not associated may obtain the property, and not the son of a different mother, who is re-united.

33. Vrihaspati describes a re-united (kinsman), thus,—"He, who being separated, dwells again through affection, with the father, brother or uncle, is called, Re-united."

34. Therefore, Re-union is the dwelling together through affection, after separation, of the father and the son, or of the brothers, or of the uncle and the brother's son, as the case may be: one forming re-union is called Re-united.

35. When a person, who is thus re-united, dies, his re-united co-heir should allot his share to his issue: on failure of his issue, shall take it himself, (§ 32).

36. The passage,—"But a uterine brother shall thus retain or deliver the allotment of his uterine brother," (§ 32)—is to be explained in the same way.

37. On this, a special rule is propounded by Yama,—"Undivided immovable property goes to all (the brothers.) But never should separated immoveable estate be taken by half-brothers." 'All,' that is, all the whole and half brothers. The inference which is deduced from the sense of this text is, that exclusive of immoveable property, everything (else) whether divided or undivided, appertains to the uterine (full) brother alone.

38. Manu clearly says,—"Of these (re-united brothers) if the eldest or the youngest or any other be deprived (of his share) previous to the allotment of shares, or dies, his share is not cancelled." "Previous to the allotment of shares," means, previous to partition; "be deprived of his share" *i. e.* by entering into a religious order, and the like.

39. As to who are entitled to that share, the same lawgiver says,—" The assembled uterine brothers shall together equally divide the same (share) ; also brothers who are re-united, and sisters born of the same mother."

40. Vrihaspati says,—" When separated brothers dwell together through affection, then among these there is no specific deduction for seniority when re-distribution takes place ; should any co-heir enter into any religious order or die, his share is not cancelled, but is to be allotted to his uterine brother : if there be any sister she is entitled to a share of it. This is the law (regulating the succession to the property) of one without issue and having neither wife nor father (surviving him.) But if any one of the re-united brethren acquires property by means of science, heroism and the like ; two shares should be allotted to him, and the rest shall take equal shares,"

41. Here, it is to be understood, that the absence of the specific deduction for the eldest among the re-united brothers, refers to the three higher tribes ; because as regards the Sudras, there is *always* this absence of specific deduction for the eldest, (and not only after re-union).

42. This is declared also by Manu,—" All the sons of the twice-born, who sprang from mothers of the same class, shall, after setting apart the specific deduction for the eldest, divide equally. But a woman of the same class only, and not of a different class, may become the wife of a Súdra. Those that are born of her become equal sharers, although there may be hundred sons."

43. Kullúka-Bhatta comments on the term ' equal sharers' in the following way,—become only equal participators *i. e.* shall not allow the specific deduction for seniority to any one.

44. This is also consonant with reason; since, as in the text,—"To the eldest is to be allotted the twentieth part, and the best of all chattles, half of that to the middlemost, but a fourth to the youngest,"—Manu has generally declared the law of deductions, therefore the second half of the latter of the two couplets (§ 42) is declared in order to remove doubts as to whether the term 'twice-born' indicates all the tribes, (or stands for what it literally signifies.)

45. Nor can it be argued that the specific deductions hold good even in the case of Súdras; inasmuch as the reason, namely, saving from the infernal region of the name of Put, is the same in all cases; because that is not the reason, since specific deductions of the half and the fourth (of what is allotted to the eldest) are declared to be given respectively to the middle one and the youngest, though it cannot be held that they save from the same.

46. Nor can it be argued that as there is a distinction between the specific deductions and the shares, all that is prohibited by the declaration of equal participation, is not the specific deduction, but the unequal distribution among the Súdras, which has been mentioned before, as taking place among those born of mothers of different tribes; because that object would be accomplished by the first half of the last couplet which says,—"But a woman of the same class only &c." (§ 42).

47. Equal participation is ordained by Manu for the purpose of prohibiting specific deductions even amongest the twice-born; for, he says, after the text,—'All the sons of the twice-born &c.' (§ 42),—" But twofold distribution among co-heirs is pronounced: one is

in the order of seniority, and the other an equal partici-pation." Vrihaspati reads "is shown" in lieu of "is pronounced."

48. Here, (§ 41), (it is to be understood that) the right of the sisters extends to so much property as is sufficient for her marriage, because it is so declared by the sages as well as by the commentators.

49. By reason of the uni-residual (Ekasesha) compound the term father in the passage "having neither wife nor father surviving him," (§ 41), indicates both the father and the mother. Because Vishnu (§ 3) and other sages declare the succession of the brother, only on failure of the mother.

50. Now Jímútaváhana says :—The text "a re-united (brother) shall keep the share of re-united co-heir" (§ 32), is intended to provide a special rule governed by the circumstance of re-union after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs. Hence, if there be competition between claimants of equal degree whether brothers of the whole blood, or brothers of the half blood, or sons of such brothers, or uncles or the like, the re-united parcenar shall take the heritage : for the text does not specify the particular relation ; and all (these relations) were premised in the preceding text (§ 2); and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

51. But when there are a half brother re-united, and a uterine brother not re-united, and when there are a whole brother and a half brother both re-united ; then two questions arise, which of the two is to succeed in each case.

52. As to the first it is said,—" A half brother however &c." (§ 32) which signifies,—let a half brother, if re-united, take, but not a half brother merely as such: but a uterine brother though not re-united may take; for the term 'uterine brother' which occurs in the preceding text is also to be construed with this latter proposition. Therefore when there are an unassociated uterine brother and a re-united half brother, they both succeed; because the equality, of the relation of re-union, and of the status of a whole brother, is expressed by the first part of the text, (§ 32).

53. As to the second, it is ordained,—" and not the son of a different mother, who is re-united," (§ 32). The meaning is that when there is a whole brother re-united, the son of a different mother though re-united shall not take, that is, the re-united whole brother alone shall succeed; since though they are equally re-united, still the whole brother as such is preferred.

54. The author of the Dáyabhága, however, construes the second couplet of Yájnavalkya (§ 42) in the following way,—"The meaning of the first half (of that couplet) is, a half brother being re-united shall take the succession, although a whole brother not re-united exists; but a half brother who is not re-united shall not inherit. The latter half of the text, is, in answer to the question,—Does not the whole brother inherit in that case? Though not re-united, the whole brother (the term is understood) shall take the heritage, and not exclusively the son of a different mother who is again associated; but it shall be taken and shared by both."

55. The same construction is put upon the passage in the Mitákshará.

56. But the great Doctor Súlapáni in his Yájnavalkya-Dípakaliká reads the passage thus,—"But a half brother, being again associated, shall not take the heritage of a half brother;" and offers the following explanatory comments,—A uterine brother though not re-united, shall alone take the heritage, but not a brother born of a rival mother, though re-united. Some explain the term 'associated' (occurring in the last part of Yájnavalkya's text, § 32) to mean one associated through the uterus, that is, a whole brother. If the reading be, "one born of a different mother shall not take the heritage," then the meaning would be, that one being a half brother shall not take the succession. This text shows the succession of a whole brother who is not re-united. Consequently there is no tautology.

57. The authors of the Ratnákara and others say that the reading which is found in the Kalpataru is —"shall not take the heritage of a half brother." But this seems to be an error committed by the copyist; since the reading in the original text of Yájnavalkya, and in such treatises as the Mitáksharà, the Párijáta and the Haláyudha, is,—"A half brother shall not take the heritage;" and the commentaries on that text are in accordance with this reading.

58. If there be no brothers, the brother's son succeeds. But first of all, the son of a whole brother takes the succession, because the property being devolved

on him, conduces to greater (spiritual) benefit; inasmuch as the mother of the (deceased) proprietor partakes of the oblations which the whole brother's son presents to his grand-father, according to the following text of Vrihaspati,—"The mother tastes with her husband the oblation consisting of food, which is reverentially offered (to his manes), and the grandmother with her husband, as also the great-grandmother with her husband."

59. In default of the son of a uterine (full) brother, the son of a half brother succeeds.

60. On failure of him, the 'gentiles' (or agnates) succeed, (§2).

61. Because Manu declares,—"To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of these offerings; but the fifth has no concern in them. The inheritance is his who is unremote of the kinsmen of him." The gloss of Kullúka-Bhatta on the last part is to the following effect,—'The inheritance is his who is unremote', *i. e.*, nearest, 'of the kinsmen' *i. e.*, from among the kinsmen, 'of him' *i. e.*, of the deceased proprietor.

62. Also because Vrihaspati says,—"When there are many agnates, distant kinsmen as well as cognates, he who among these is the nearest, succeeds to the estate of one who leaves no children."

63. Therefore, a successor to the inheritance is to be determined by reference to two considerations, namely, his comparative capacity as regards the offering of oblations, and his proximity of birth.

64. Accordingly, as on failure of the deceased proprietor's own lineage down to the daughter's son, others succeed, similarly in default of the brother's son, the father's lineage ending with his daughter's son takes the heritage.

65. In their default, the grand-father succeeds.

66. On failure of him, the grand-mother inherits. Since Manu ordains,—"The mother receives the inheritance of her son destitute of issue; and when the mother too is dead, the father's mother takes the property." Therefore, as the mother succeeds on failure of the father, similarly the paternal grandmother is the heir, in default of the paternal grandfather.

67. In her default, the descendants of the paternal grandfather, down to his daughter's son, succeed in the same way, as has been seen with regard to the father's issue.

68. On the same principle, the paternal great-grandfather, the paternal great-grandmother, and the descendants of the paternal great-grandfather, down to his daughter's son, (succeed in the same order.)

69. On failure of (these) givers of oblations partaken of by the deceased (proprietor,) the 'cognates' (§ 2) such as the maternal grandfather, the maternal uncle and the like,—(are entitled to the inheritance.)

70. Among these too, if the maternal grandfather survive, he alone succeeds, in the same way as the father and the like.

71. If he be dead, then the maternal uncle and the like become heirs in the same order, since they present oblations to the maternal grandfather and the like, which the deceased (proprietor) was bound to offer.

72. On their default the 'Sakulyas' or the kinsmen of divided oblations become heirs. They consist of the three generations of descendants, beginning with the great-grandson's son, and also of the descendants of the paternal great-grandfather's father and the like.

73. It is in pursuance of the same principle (§ 63) that the author of the Dáyabhága says,—"Since the paternal uncle, like the son of the whole brother, offers oblations, which the owner was bound to present, to two ancestors, should not the succession devolve equally on the paternal uncle and the fraternal nephew of the proprietor? The answer is, the paternal uncle is indeed the giver of oblations to the paternal grandfather and great-grandfather of the proprietor; but the nephew is the giver of oblations to two ancestors including the owner's father who is principally considered; he is therefore a preferable claimant, and inherits before the paternal uncle."

74. Likewise, when there is a paternal uncle, and a son of a deceased paternal uncle, of the deceased; in such a case although there is no distinction as to the presenting of oblations, which the deceased was bound to offer, to the paternal grandfather and great-grandfather, still the paternal uncle inherits by reason of his proximity of birth.

75. Because, the allotment of shares according to the proximity of birth is set forth in the following text,—

"Among the sons of different fathers, the allotment of shares is according to the fathers."

76. Accordingly, it is said in the Mitákshará that the paternal grandfather, the paternal uncle and his son take the succession in their order.

77. Also in the Viváda-Chintámani it is stated regarding succession to the property of one who leaves no male issue, that on default of the brother, his son (succeeds), on failure of him the nearest kinsman (inherits.)

78. The term 'cognates' in the text of Vrihaspati (§ 62) shows that the cognates of the owner himself, and of his father and of his mother are, in their order, entitled to inheritance. And they are,—"The father's sister's son, the mother's sister's son, and the maternal uncle's son are considered to be the cognates of the owner himself. The father's father's sister's son, the father's mother's sister's son and the father's maternal uncle's son, are known as the cognates of the father. And the mother's cognates are her mother's sister's son, her father's sister's son and her maternal uncle's son."

79. A'pastamba says,—"Either the disciples or the daughter shall use the property for religious acts in his welfare." 'For religious acts in his welfare,' signifies, for religious acts such as the monthly oblations and the like which are enjoyed by him, that is to say, for his spiritual benefit.

80. Thus also when there is a possibility of the destruction of his property, although there may be heirs to

his property in distant places, still any one may apply the property of the deceased to the purpose of his funeral obsequies as well as to the purpose of his religious merit.

81. Because in the following text of Nárada, it is said that even a priest may become a substitute (of the heir),—"Even he who out of affection, acts, of his own accord, as a priest." This is explained at length in the Suddhi-Tattwa.

82. This is admitted by the author of the Dáyabhága when he says,—"The appropriation of the wealth of the deceased to his spiritual benefit, in the mode which has been stated, should, in every case, be contemplated.

83. Thus in The Principles of Law composed by the fortunate Raghunandana Bhattáchárjya the son of the great Doctor the fortunate Harihara Bhattáchárjya, The Principles of Heritage is finished.

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